INTERface

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HIGHLIGHTS

Applicability of Lokpal to NGOs

Foreign Donor & others under prior permission category

Difference between commercial & fund Accounting Systems

Provisions of companies (CSR) Rules, 2014

Gender Policy

Between us……..

Grace, not right

A saint lived in an Ashram in the forest. There was also a little mouse living in the same forest. One day, while he was roaming in the forest in search of food, he was attacked by a big cat. The mouse was scared. He ran straight to the ashram of the saint. There he lay prostrate before the saint and narrated to him the whole story in a trembling voice. In the meantime, the cat also arrived there and requested the saint to allow him to take his prey. The saint was in a fix. He thought for a moment and then with his divine powers transformed the mouse into a bigger cat. Seeing a huge cat before him the other cat ran away.

Now the mouse was carefree. He began to roam about in the forest like a big cat. He meowed loudly to frighten other animals. He fought with other cats to take revenge on them and in this way killed many of them. The mouse had hardly enjoyed a few carefree days of his life, when one day, a fox pounced upon him. This was a new problem. He had never taken into account that there were yet bigger animals who could easily maul him and tear him into pieces. He ran for his life, - He, somehow, saved himself from the fox and ran straight to the saint for help. The fox too was in his hot pursuit. Soon both of them stood before the saint. The saint seeing the plight of the mouse this time transformed the mouse into a bigger fox. Seeing a big fox before him the other fox ran away.

The mouse became more carefree and began roaming about in the forest more freely with his newly acquired status of a big fox. But, his happiness was short-lived. One day, while he was moving around in the forest freely, a tiger pounced upon him. The mouse, somehow, managed to save his life and as usual ran to take shelter in the ashram of the saint. The saint, once again, took pity on the mouse and transformed him into a tiger.

Now, the mouse, after acquiring the status of a tiger, roamed fearlessly in the forest. He killed many animals in the forest unnecessarily.

After having been transformed into a tiger, the mouse had become all-powerful for the forest animals. He behaved like a king and commanded his subjects. But one thing always bothered his mind and kept him worried; and that was, the divine powers of the saint. "What, if, one day for some reason or the other, the saint becomes angry with me and brings me back to my original status," he would think worriedly. Ultimately, he decided something and one day, he came to the saint roaring loudly. He said to the saint, "I'm hungry. I want to eat you, so that I could enjoy all those divine powers, which you do."

Hearing these words the saint immediately transformed the tiger back into the mouse.

The worst had happened. Now the mouse realized his folly. He apologized to the saint for his evil actions and requested him to change him again into a tiger. But the saint drove the mouse away.

It is important not to misuse grace. Many times grace is misunderstood as right. The natural response to grace is being thankful.

Acknowledgment

We are grateful to the authors who have contributed the articles in this edition.

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Contents

LEGAL

FINANCE

CSR

GOVERNANCE

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LEGAL

1. FILING OF RETURNS UNDER INCOME TAX UNDER IN THE AMENDED ITR-7
2. APPLICABILITY OF LOKPAL TO NGOS
3. FOREIGN DONORS & OTHERS UNDER PRIOR PERMISSION CATEGORY

FILING OF RETURNS UNDER INCOME TAX IN THE AMENDED ITR-7

OVERVIEW OF FILING OF RETURN

1.1.1 In this issue the procedure pertaining to filing of return under the Income Tax Act has been discussed. After the Finance Bill, 2016 there has been significant changes in the ITR-7 Form (the form in which all NPOs and Trusts have to file their return), the implications of such changes has also been discussed.

1.1.2 All charitable organisations having income exceeding the maximum amount which is not chargeable to income tax during the previous year are required to file their returns of income. Currently the maximum amount which is not chargeable to income tax is Rs. 2.5 lakhs per year.

1.1.3 The 'income' for the purposes of filing the return should be computed without giving effect to the provisions of sections 11 and 12 of the Act. This means trust & societies are required to submit their return if the income is more than the basic exemption limit and in case of Section 8 company, the return has to be filed even if there is Re.1/- income, as for Section 8 company there is no basic exemption limit. Such returns are to be filed with the Income-tax Officer or the Assessing Officer under whose local jurisdiction they fall. The return is to be filed as per the provisions of section 139(4A) and (4C) in the manner provided in section 139 of the Act.

1.1.4 The Taxation Laws (Amendment) Act, 2006 has amended section 139(4C)(*e*) and also inserted a new sub-section (4D) in section 139. As a consequence, medical institutions under section 10(*23C*)(*iiiae*) having gross receipts of Rs. 1 crore or less are also required to file return if the income exceeds the maximum amount which is not chargeable to income-tax during the previous year.

1.1.5 Further, the organisations notified under section 35(1)(*ii*) & (*iii*) are also required to file annual return if the income exceeds the maximum amount which is not chargeable to income-tax during the previous year.

1.1.6 Upto the Assessment Year 2015-16, the organisations claiming exemption under sub-section (iiiab) & (iiiac) of Clause 23C of Section 10 i.e. university or other educational institution, Medical institution existing solely for educational/medical purposes & not for purposes of profit & which is wholly or substantially financed by the Government were exempt from furnishing of return. However Finance Act, 2015 has proposed that these organisations shall also have to file their Income Tax Return u/s. 139 w.e.f. 2016-17.

1.1.7 The last date of filing of return is 30th September of the Assessment Year.

MAJOR CHANGES IN THE NEW ITR-7 FORM FOR ASSESSMENT YEAR 2016-17

1.2.1 CBDT has notified the new ITR Form for Assessment Year 2016-17, the major changes in ITR-7 are as follows:

1.2.2 Business Receipts : The Finance Act, 2015 had substituted the proviso to Section 2(15) to provide that the advancement of any other object of general public utility

shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, unless:

i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year. In other words, advancement of any other object of charitable purpose shall not be deemed as charitable if receipts from any commercial activity exceed 20% of total receipts.

Accordingly, a new row is inserted in ITR 7 to disclose percentage of business receipts vis-a-vis total receipts in order to ensure that such condition (as given hereinabove) is not violated.

1.2.3 Application of income by a Trust:-

Income of charitable or religious trust is exempt if 85% of its income is applied for charitable or religious purposes in India. If income applied for charitable or religious purposes during the previous year falls short of 85% because such income has not been received during the year or due to any other reason, an option is given to assessee to apply such income in future years in prescribed manner. Assessee has to choose such an option by filing Form 9A to the Assessing Officer before due date of filing return of income under Section 139(1).

Now a separate row is provided in new ITR 7 requiring trust to confirm if it has filed

Form 9A to exercise such an option and the date of filing of such form.

1.2.4 Details to be given by Universities, Hospitals, Educational Institutions:-

Exemption under sub-clause (iiiab) and (iiiac) of Section 10(23C) is available to universities or educational institutions, hospitals or other institutions which are wholly or substantially financed by the Government, subject to certain prescribed conditions.

The Finance Act, 2015 has amended the provisions of Section 139 to provide that such entities covered under clauses (iiiab) and (iiiac) of Section 10(23C) shall be mandatorily required to file their returns of income.

Now such universities, hospitals, educational institutions, etc., have to disclose their name and annual receipts in new ITR 7. Further, they are also required to disclose the amount eligible for exemption in ITR 7.

DELAYED SUBMISSION OF RETURN OF INCOME

1.3.1 *An* organisation which fails to furnish its return of income within the due date can still submit its return of income any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, which ever is earlier. For instance, a return of income for the financial year 2013-14 can be submitted upto 31st March, 2016.

1.3.2 Under section 272A(2)(*e*), any voluntary organisation which fails to furnish the return of income which is required to be furnished under sub-sections (4A) and (4C) of section 139 or fails to furnish it within the time allowed and in the manner required under that sub-section, it shall pay by way of penalty a sum of Rs. 100 per day during which the failure continues. Before imposing such penalty, an opportunity of being heard shall be given to the organization.

1.3.3 The Finance Act, 2015 has provided that :

(a) in order to claim the benefit of accumulation of income for five years, Form 10 has to be submitted within the time limit provided for submitting the return u/s. 139(1) and also in such cases Return of Income has to be filed in time by the organisation.

(b) The option in terms of explanation 2 to Section 11 has to be exercised in writing and has to be submitted before the expiry of time limit as provided u/s. 139(1), though in such case the submission of return can be delayed.

SUBMISSION OF RETURN

1.4.1 The Return has to be filed in ITR-7 and w.e.f. F.Y. 2013-14, e-filing of Income Tax Return has become mandatory.

1.4.2 Signature can be put through digital signature or submitting the verification of the return in Return Form ITR-7 & then send the same to Income Tax Centralized Processing Centre, Prestige Alpha, No. 48/1 & 48/2, NH-7, Basapura, Bengaluru, Karnataka-560100 after signature.

KEY CHANGES IN THE PROCESS OF EXERCISING OPTION UNDER SECTION 11

1.5.1 Section 11 of the Income Tax Act provides two options to the assessee trust when the application of income falls short of 85% of income.

1.5.2 *Option – I : Section 11(1)*

Where the income could not be applied due to non-receipt of the income or any other reason-the income can be spent in the year of receipt/next year.

Presently no specific format has been provided and the option is exercising in writing to the Assessing Officer before the expiry of the time allowed for furnishing of its return of income u/s 139(1) as specified in Rule 17.

1.5.3 *Option - II : Section 11(2)*

An accumulation for specific project for specific purpose is also allowed for a maximum period of five years. Presently such option is exercised in writing to the Assessing Officer in form no 10 before the expiry of the time allowed for furnishing of its return of income u/s 139(1) as specified in Rule 17.

1.5.4 Rule 17 has been amended vide Notification dt. 14/01/2016 w.e.f. 01/04/2016 and now as per the amended Rules Form 9A has been notified for exercise of option under section 11(1) and Form 10 has been modified for option u/s 11(2) for accumulation upto Five years.

1.5.5 The option in Form No.9A referred to in sub-rule (1) and the statement in Form No.10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code. Copy of notification together with Form 9A & modified Form 10 is enclosed herewith.

ONLINE FILING OF AUDIT REPORT IN FORM 10B

1.6.1 With effect from Assessment year 2013-14, it has also become mandatory to upload online audit report in Form 10B.

REVISION OR CORRECTION OF MISTAKES (IN THE RETURN ALREADY SUBMITTED)

1.7.1 The concerned organisation can file a revised return at any time before the expiry of one year from the end of the assessment year or completion of the assessment, whichever is earlier, only if there is any mistake or omission in the return. For instance, the income tax return submitted for the assessment year 2013-14 can be revised any time on or before 31st March, 2015, provided the Assessing Officer has not completed the assessment in the intervening period. However it is to be noted that the return can be revised only if it is originally is filed within due date.

FILING OF RETURN BY UNREGISTERED ORGANISATIONS

1.8.1 Charitable / Religious Organisations, which are not registered u/s 11 or u/s 10(23C) of the Income Tax Act and do not enjoy any exemption on their income. Hence, they are liable to file the return if the voluntary contribution received by them or their income exceeds the maximum amount which is not chargeable to income-tax in any previous year. Such organisations should file their income-tax return in ITR-7.

APPLICABILITY OF LOKPAL TO NGOs

INTRODUCTION

2.1.1 Under the Lokpal and Lokayuktas Act 2013 (LLA, 2013) three new Notifications have been issued providing directions to the functionaries and office bearers of NPOs for disclosure of various information's. The LLA, 2013 is an Act intended to regulate and control corruption in public functionaries. However, NGOs which are generally private institutions for public purposes have also been included under the purview of LLA, 2013 under certain specific circumstances. In this article we shall discuss the amended law and its implications.

OVERVIEW OF THE LATEST AMENDMENT

2.2.1 The Ministry of Personnel, Public Grievances and Pensions has issued three notifications Nos.-1541, 1542, 1543 dated. 20.06.2016. By virtue of these

Notifications procedural guidelines with regard to The Lokpal and Lokayukt as Act 2013 (LLA, 2013) have been provided. The guidelines include the functionaries and office bearers of NPOs for disclosure of information. The LLA, 2013 is an

Act intended to regulate and control corruption in public functionaries. However,

NGOs which are generally private institutions for public purposes have also been included within the purview of LLA, 2013 under certain specific circumstances. In this article we shall discuss the amended law and its implications and amendment rendered by the Central Government on 29th July 2016 and the recent notification issued on 1st December 2016. Kindly see *Annexure 1, 2, 3 for* Notification Nos. 1541, 1542 & 1543 Dtd. 20.06.2016, *Annexure 4* for amendment of the Lokpal & Lokayukt as 2013 on 29th July 2016 and *Annexure 5* for the notification of deferment in filing returns issued on 1st December 2016.

2.2.2 There are two important changes pertaining to Section 14(g) and Section 14(h) of the LLA, 2013. The implication of these two changes is as under:

- Any NGO receiving more than Rupees 1 crore grant annually will now be covered under the amended law. The NGOs established funded by the Central Government were in any case covered under LLA, 2013 however the financial limit has been prescribed now.
- Any NGO receiving donation of more than Rupees 10 lakh annually from foreign sources under FCRA 2010 were already covered under the law. However the recent Notification requires compliance from the functionaries of such NGOs.

2.2.3 The law will apply to the functionaries and officers of the NGOs and not the NGOs *per se*. In other words, the officers and functionaries of NGOs shall have to file annual returns declaring their assets and other prescribed particulars every year under LLA, 2013. According to the LLA, 2013 all the functionaries and officers had to file the return for the year ended 31st March, 2016 on or before 31st July, 2016. However **the recent notification (No. 407/16/2016-AVD-IV(LP) on 1st December 2016 by Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training has deferred the date of submission of returns**.

2.2.4 If an NGO has received, say, 15 lakh rupees foreign contribution in one year, then the law shall apply for all the forthcoming years till the amount is utilised or exhausted. It may create practical problems i.e. a corpus donation will never be exhausted and therefore, the LLA, 2013 will also continue to apply.

2.2.5 The amended provisions will treat the Director, Manager, Secretary or Officer of an NGO as a *Public Servant*. According to the provisions of *'Declaration by Public Servant under Section 44 of LLA, 2013',* he/she shall make a declaration of assets and liabilities in the manner as provided under this Act(***Previously Section 44 of the LLA 2013 required declaration of assets and liabilities of spouses and dependents however this provision was changed on 29th July 2016 through amendment passed in the Lok Sabha and is limited only to the assesse***) . The definition of Public Servant will cover Board Members and Senior Employees of NGOs.

2.2.6 The declaration shall include (after the Amendment to the Lokpal & Lokayuktas Act, 2013) :

(i) the name of the public servant

(ii) details of cash and bank balances and other moveable properties including investment, advances, vehicles, jewellery etc.

(iii) details of immovable property whether residential, commercial, agricultural or otherwise

(iv) details of loan taken along with the detail of loan provider.

2.2.7 In case where such Public Servant or Director and Officers of NGOs do not make declaration of their assets, it will be treated as an offence and the Lokpal shall have the power to initiate inquiry and even confiscate the assets of such officers.

2.2.8 The Competent Authority to whom the return shall be filed will be the respective Ministry which has provided the maximum proportion of the grant or donation during the previous year. In other words, in case of government grant the Competent Authority may also change from year to year. In case of foreign contribution received the Competent Authority shall be the Ministry of Home Affairs.

AMENDMENT TO THE LOKPAL AND LOKAYUKTAS ACT, 2013

2.3.1 The Lok Sabha passed "The Lokpal and Lokayuktas (Amendment) Bill, 2016 on 29th July 2016 which altered Sec 44 and Sec 59 of the Act.

Section 44 of Lokpal & Lokayuktas Act, 2013 was amended by the Lok Sabha rendering the clause concerning returns to be filed by spouses and dependent children of 'public servants' nullified.

In Sec 59 only sub section (2) and clause (k) has been amended. This means that the form and manner of filing returns will be prescribed at a later date.

Therefore with such an amendment spouses and dependent children are exempted from filing the returns and the prescribed format of filing returns shall be announced at a later date. (See Annexure 4 & 5)

WHO COME UNDER THE LOKPAL'S PURVIEW?

2.4.1 It may be noted that the Director, Manager, Secretary or Officer of FC registered organization are already under the purview of LLA 2013. Under section 14(1)(h)FC

registered organization have been included under the purview of LLA ever since its enactment from 01.04.2014. The existing provision is as under:

"any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess often lakh rupees in a year or such higher amount as the Central Government may, by notification, specify".

2.4.2 The Notification has specified the 1 crore grant limit for NGOs receiving funds from Govt. The 10 lakh limit for FC registered organization has not been enhanced.

NOTIFICATION NO. 1541 REGARDING NODAL MINISTRY AND PERIOD OF FILING

2.5.1 The Notification No. 1541 Dtd. 20.06.2016 provides guidelines about organizations and NGOs covered under section 14(1)(g) of the LLA, 2013. These guidelines are regarding those NGOs which receive more than Rs. 1 crore annually from Central Government. This Notification does not cover FC registered organizations. However this Notification provides the procedure of filing return which shall apply to all organizations including FC registered organizations (wherever applicable). It reads that return should be filed to the Ministry or Department from which highest grant was received. It further says that a copy should be sent to all other Ministries or Departments financing such society or association of persons or trust. In other words, an organization has to file return to all Departments and Ministries. The Notification further specifies that the Public Servant shall keep on filing return till the grant amount is exhausted.

2.5.2 The main features of this Notification is as under:

(i) the original declaration or annual return may be filed before the Ministry or Department making the highest contribution as financial assistance and a copy of the return may be sent to all other Ministries or Departments financing such society or association of persons or trust;

(ii) the annual returns shall continue to be filed by the category of public servants referred to in paragraph (1), till such time the entire financial assistance allowed to such society or association of persons or trust stands fully utilized for the purposes for which it was allowed;

(iii) the competent authority with which such annual return is to be filed may vary from year to year based on the Ministry or the Department whose contribution as financial assistance to the said society or association of persons or trust is highest in the year;

(iv) the expression "every other society" means a society not covered under clause(g) of sub-section (1) of section 14 of the said Act.

The Notification No. 1541 Dtd. 20.06.2016 is provided in *Annexure 1.*

NOTIFICATION NO. 1542 REGARDING 1 CRORE LIMIT

2.6.1 The Notification No. 1542 specifies the financial limit of Govt. funding beyond which the disclosure requirements of LLA 2013 for Public Servants shall apply. The limits specified is "One Crore Rupees". Further, for the purpose of this notification, only the grants or financial assistance given by the Central Government may be taken into consideration for determining the annual income. The Notification No. 1542 Dtd. 20.06.2016 is provided in *Annexure 2.*

NOTIFICATION NO. 1543 REGARDING DIRECTORS & STAFF OF FC REGISTERED ORGANIZATIONS

2.7.1 The Notification No. 1543 Dtd. the 20th June, 2016 is regarding the Directors & Staff of FC registered organizations who are deemed as 'Public Servants'. This Notification provides that the Nodal Body for filing of returns shall be Minister in-charge of the Ministry of Home Affairs. It refers to clause (h) of sub-section (1) of section 14 of the said of LLA 2013 which provides that FC registered organization receiving donation in excess of Rs. 10 lakh per year from foreign source shall be covered under LLA 2013.

2.7.2 It further states that such deemed 'Public Servants' shall file returns till such time the entire amount of the donation aforesaid, received by such society or association of persons or trust stands fully utilized. The Notification No. 1543 Dtd. 20.06.2016 is provided in *Annexure 3.*

CAN THE THREE NOTIFICATIONS BE LEGALLY CHALLENGED

2.8.1 The three Notifications no. 1541, 1542 & 1543 just notify the procedure and financial limit regarding the law which is already applicable under the LLA 2013. These Notifications do not create anything which is beyond the ruling statute LLA 2013 and therefore cannot be challenged as they are procedural in nature and do not bring any new coercive or unfair element in the existing LLA 2013. If any violation of the Constitutional provisions is noticed, then the LLA 2013 has to be challenged. In other words, the FC registered organization were already under the purview of LLA 2013 since the enactment of LLA 2013 and any Constitutional remedies (if applicable) are already available irrespective of the Notifications. The Notification just clarifies the procedures and timelines of filing the returns by such deemed 'Public Servants'.

WHO IS A PUBLIC SERVANT

2.9.1 The term 'Public Servant' is defined under section 2(1)(o) of the LLA 2003, the provision is as under :

"2(1)(o) "public servant" means a person referred to in clauses (a) to (h) of subsection

(1) of section 14 but does not include a public servant in respect of whom the jurisdiction is exercisable by any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957 and the Coast Guard Act, 1978 or the procedure is applicable to such public servant under those Acts".

2.9.2 Section 14(1) of LLA actually provides the list of the persons/organization which are covered. The Directors, Secretary, Managers and Staffs of all such organization are covered, the text of Section 14(1) is provided in *Annexure 4.* Briefly the provisions of section14(1) are as under:

(a) Past or Present Prime Minister

(b) Past or Present Union Minister

(c) Past or Present Member of Parliament

(d) Past or Present Group A or B Officers of Central Govt.

(e) Past or Present Group A or B Officers of Central Govt.

(f) Chairperson or Member or Official or Employee of a Govt. Corporation or totally financed by Govt.

(g) Director, Manager or Secretary or any other officer of NGOs funded by Govt. in excess of Rs. 1 crore.

(h) Director, Manager or Secretary or any other officer of NGOs funded by foreign source in excess of Rs. 10 lakh.

2.9.3 The section 2(2) of LLA 2013 further provides that for any words and expression not provided in LLA 2013, the provisions of the Prevention of Corruption Act 1988 shall apply accordingly. The definition of 'Public Servant' as defined under section 2(c) the Prevention of Corruption Act 1988 is provided in *Annexure 6*. This provision basically covers Member or Official or Employee of a Govt. Bodies or Societies totally financed by Govt.

2.9.4 It may be noted that definition of 'Public Servant' covers only Govt. organizations or Govt. funded organizations. The FC registered NGOs are the only exception. In other words, FC registered NGO is the only private category of organization covered under LLA 2013.

WHAT IS PUBLIC DUTY

2.10.1 The definition of 'Public Duty' as defined under section 2(b) the Prevention of Corruption Act 1988 is as under:

"2(b) "Public Duty" means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation - In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956."

2.10.2 The term 'Public Duty' provides a broader connotation to the mandate and scope of a 'Public Servant'. In a literal sense all NGO activity can be a duty in the discharge of which the State, the public or the community at large has an interest. However for that matter, many private sector undertaking including banks, power generation & supply companies etc. can be considered to be discharging duty in which the State, the public or the community at large has an interest.

CAN FUNCTIONARIES OF PRIVATE ORGANIZATIONS BE DEEMED AS PUBLIC SERVANT?

2.11.1 The Supreme Court in the past has held that under specific circumstances an employee of a private entity can also be deemed as a 'Public Servant'. In the case *Central Bureau of Investigation, Bank Securities & Fraud Cell v. Ramesh Gelli & Ors.*, Criminal Appeal No. 1077-1081 of 2013 decided on February 23, 2016, the Supreme Court held that the chairman and directors of a private bank would also be 'public servants' for the purpose of POCA. However in this case there were Criminal allegations against the chairman and directors of a private bank which had a direct impact on the public. In other words, this ruling did not imply that all employees of all private bank should be treated as 'Public Servant'. The ruling laid a principle that under specific circumstances even persons from private entities can we treated as 'Public Servant'.

CAN FUNCTIONARIES OF FC REGISTERED ORGANIZATION BE DEEMED AS PUBLIC SERVANT?

2.12.1 A FC registered organization or for that matter any NGO is a private organization for public purposes. Therefore any organizations unless it is substantially funded by Govt. cannot be treated as a Public Institution. Therefore if a FC registered organization

is treated as a Public Institution, then it is a contradiction with all the prevailing laws except section 14(1)(g) of LLA 2013 which specifically includes FC registered organization.

2.12.2 Even in the case *CBI vs Ramesh Gelli & Ors (Supra)* the Supreme Court treated the chairman and directors of a private bank as 'public servants' for the purpose of POCA, but in this case there were specific Criminal Allegation against such persons.

In such circumstances barring section 14(1)(g) of LLA 2013 there is no provision or precedence where employees of private organizations being treated as 'Public Servants' only because they happen to work in a particular type of private organization.

CAN LOKPAL ACT BE CHALLENGED UNDER ARTICLE 14 OF THE CONSTITUTION?

2.13.1 There seems to be enough reason for FC registered organizations to challenge the LLA 2013 Act, itself. However the law and the reasoning regarding any such challenge is very subtle and nuanced. A brief overview of the available Cause of Action' against LLA 2013 is as under.

2.13.2 The LLA 2013 is enacted to inquire into the allegations of corruption against public servants. Therefore this law is not against organizations but against functionaries and staff of organizations engaged in Public Duty.

2.13.3 There are two technical angle from which the applicability of LLA 2013 can be perceived,

– Firstly, can an employee or functionary of a NGO be treated as a 'PublicServant' as NGOs including FC registered NGOs are private organizations?

  In this context the Lokpal Act directly provides under section 14(1)(g) & (h) that employees of Govt. funded NGOs and FC registered NGOs (receiving more than 10 lakh FC grant) shall be treated as Public Servant. In other words, the Director or Employee of an FC registered NGO is a deemed 'Public Servant'. However there is no other statutory or judicial precedence where the employees of private organizations, in general, have been treated as 'Public Servants', though there may be specific circumstances under which the employees of private organizations, in specific circumstances, have been treated as 'Public Servants'.

– Secondly, FC registered NGO is the only private organization which has been brought under the scope of LLA 2013. All the other bodies and entities coming under the scope of Lokpal are either government institutions or substantially supported by the Govt. An FC registered organization is the only exception and the only private body covered under the scope of Lokpal.

2.13.4 Therefore the section 14(1)(h) seems to be discriminative and in violation of Article 14 of the Constitution of India because all other organization/persons under sub section 14(1) are Public Institutions or Govt. funded institutions. The FC registered organization is the only private entity singled out to be covered under the scope of LLA 2013.

2.13.5 The right conferred by Article 14 postulates that all persons under similar circumstances shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, out of necessity has to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognized that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws.

2.13.6 It is, however, required that the classification must satisfy two conditions, namely,

(i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and

(ii) differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete.

2.13.7 The Supreme Court in several cases including the case *Venkateshwara Theatre v. State of Andhra Pradesh and Others* 1993 (3) SCC 677 has held that one particular class cannot be singled out for a special or adverse treatment. Therefore in the case of FC registered organization, it is a clear cut violation of Article 14 as far as singling it out as the only private category of organizations to be covered under LLA 2013.

2.13.8 The two arguments which could possibly be placed against the FC registered organization are:

(i) They receive funds from foreign sources and therefore there is a need for greater vigil. However this may not be a tenable argument for creating an independent category for applicability under LLA 2013, because,

– **Firstly**, FC registered organization receive only a portion of foreign grant and donations coming into India. There are many bilateral international agencies who fund into India without the requirement of FCRA,

– **Secondly,** there are many branches of foreign NGOs who bring funds into India without being covered under FCRA.

– Foreign funds flowing into India is involved in many activities of National importance. There are many companies with Foreign Investments involved in activities like power generation, heavy industries, exploration of oil & minerals, banks etc.

These industries are involved in activities which have direct impact in the life and destiny of common people. Therefore it would be unfair to categorize only FC registered organization has being for Public Duty and others as private initiatives.

The Govt. is proposing 100% FDI in defence sector which is so crucial and has national immense importance. In such circumstances proposing that FC registered organization is the only private entity which should be under the scope of Lokpal seems to be in violation of Article 14 of the Constitution.

(ii) The FC registered organizations hold funds for public purposes. In this context it may be noted that all charitable or public religious organization hold funds for public purposes. In such circumstances saying that a small group of organizations registered under FCRA shall only be made accountable under LLA 2013 again seems to be in violation of Article 14 of the Constitution.

IS A SECTION 8 COMPANY EXEMPTED FROM THE PURVIEW OF LLA 2013

2.14.1 In our opinion a section 8 company registered under the Companies Act 2013 or a section 25 company registered under the erstwhile Companies Act 1956 is also covered under the purview of LLA 2013.

The section 14(1)(h) of LLA 2013 is reproduced as under:

> *"any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify."*

2.14.2 The above provision states that any Society, or Association of Persons or Trust is included whether registered under any law or not. More importantly the above provision covers and uses the term Trust. Under the prevailing law all registered and unregistered NGOs are Trusts or Legal Obligations for specific public purposes. In fact under the Income Tax Act, section 11 provides exemptions to 'income from property held under Trust.' All NGOs including section 8 company claim exemption under the Income Tax Act by declaring its income as 'income from property held under Trust.'

2.14.3 In the case of *Dy. CIT v. A.P. State Textile Development Corporation Ltd.* [1995] 53 ITD 142 (Hyd.), it was held that even a private limited company can be treated as a trust. It is not necessary even to have a section 25 company for charitable purposes. If the memorandum of association creates a legal obligation for the company to work exclusively for charitable purposes, it is good enough to create a charitable entity. The Tribunal observed that there is no bar in law or a legal disability for a private company to engage in charitable activities. For being a charitable institution, it is not necessary that it should be registered under section 25 of the Companies Act. Section 25 of the Companies Act neither lays down nor can it be interpreted to mean that if a company is directed to be registered with the addition of the words limited or private limited, it shall not be a charity. If, therefore, any legal obligation is there in its memorandum of association or articles of association which is wholly for charitable purpose, it would enjoy the exemption under section 11. In other words, a Trust will include all legal obligation and all forms of NGOs.

2.14.4 The section 13(7) of the Income Tax Act 1961 provides that a Trust includes a legal obligation. In fact all money set aside irrevocably for public purposes is a legal obligation and all NGOs whether registered or unregistered are legal obligations.

In the case of *CIT v. Market Committee* [2007] 294 Taxman 563/ [2008] 166 Taxman 392 (Punj.&Har.)it was held that the Explanation to section 13(7) leaves no ambiguity in the matter, that an assessee discharging legal obligations, has to be treated as a 'trust' for the purposes of sections 11, 12 and 12A. In this case it was held that a market committee constituted by the local Government shall be covered as a trust as long as it was fulfilling a legal obligation for public purposes. The Supreme Court in the case *CIT v. Andhra Pradesh State Road Transport Corpn.*[1986]159 ITR 1 held that a corporation was also a legal obligation.

2.14.5 In the light of the above, in our opinion, it is reiterated that section 8 and erstwhile section 25 company are also covered within the purview of LLA 2013.

PROVISIONS OF DECLARATION BY PUBLIC SERVANT

2.15.1 The amended provisions will treat the Director, Manager, Secretary or Officer as a Public Servant. The provisions of declaration by Public Servant under Section 44 of LLA, 2013 states that he shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

The provision of section 44 is as under:

"(*2*) *A public servant shall within a period of 30 days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to :-*

(a) his assets

(b) his liabilities

(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2) to the competent authority within 30 days of coming into force of this Act.

However the date for filing declarations has been deferred as notified in the No. 407/16/2016-AVD-IV(LP) dated 1/12/2016 issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training

(4) Every public servant shall file with the competent authority, in the form and manner as may be prescribed , an annual return of such assets and liabilities,(refer to Annexure 4) as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(6) The competent authority in respect of each Ministry or Department shall ensure that all such statements are published on the website of such Ministry or Department by 31st August of that year. Explanation-For the purposes of this section, "dependent children" and spouses have been exempted from the ambit of LLA, 2013 following an amendment to the Act on 29th July 2016. (see Annexure 4)

2.15.2 While Director, manager, secretary or other officer of every society or association of persons or trust has not been defined, it seems that it covers persons who are in an executive position as well as get remunerated by the organization.

WILL BOARD MEMBERS AND ALL STAFF BE COVERED?

2.16.1 A Public Servant is a very broad term and it is not clear to what extent the employees or Board Members of a NGO shall be covered. The section 14(1)(h) states that "Director, Manager, Secretary or Other Officer.....". It may be noted that the term Other Officer is used in singular which implies that any other officer executing a function similar to a Director, Manager, Secretary. Under this interpretation all the employees and officers of the NGO shall not be covered but only the Senior Management Team involved in the executive function should be treated as Public Servants. This argument also draws strength from various High Court and Supreme Court decisions in declaring various person as Public Servants. Normally the courts have held that in order to be a Public Servant the person should be:

- having discretion over decisions pertaining to Public Duty
- should be appointed,
- subject to dismissal
- should be remunerated.
- and he or she should be subordinate to an authority

2.16.2 In the case *M. Karunanidhi vs. Union of India*, 1979 Crl.L.J.773: AIR 1979 SC 598 the Supreme Court held that Minister is appointed and dismissed by the Governor and is therefore subordinate to him, that he gets salary for the public work done or the public duty performed by him and that the said salary is paid to him from the Government funds

2.16.3 In the case of *P.V. Narasimha Rao vs. State (C.B.I.)*, 1998 Crl.L.J.2930 (decided on 17-4-1998), a 5-judge Bench of the Supreme Court laid down that a Member of Parliament (MP) holds an office and by virtue of such office he is required or authorized to perform duties and such duties are in the nature of public duties. An MP would therefore fall within the ambit of sub-cl.(viii) of cl.(c) of section 2 of the Prevention of Corruption Act, 1988 even though there is no authority who can grant sanction for his prosecution under section 19(1) of the Act.

2.16.4 In the light of the above it seems that Honorary Board Members of Societies and Section 25/ Section-8 companies will not be covered under the definition of 'Public Servant' under LLA 2013 for the following reasons:

- They do not directly execute any activity
- They are not remunerated
- They are not subordinate to any executive authority

2.16.5 However in case of a Trust, all the Trustees are the legal executants and representatives on behalf of the Trust. Therefore technically the law should apply to all the Trustees, though again the intent of the law does not seem to cover Honorary Trustees. In this context it may be noted that technically a Society or a Section 8 Company is also a legal obligation, but in such cases the Society or a Section 8 Company itself is the Trustee. On the other hand in case of a Trust, the specified individuals are the Trustees. Further, in our opinion, the LLA 2013 does not intend to cover all the employees of the organization.

As discussed the section 14(1)(h) states that "Director, Manager, Secretary or Other Officer.....". All the employees can be covered only under the term Other Officer. This term is used in singular and implies that any other officer executing function similar to a Director, Manager or Secretary. The 'or' has been used after the words "Director, Manager, Secretary". Therefore the intent of the Act and the interpretation of Section 14(1)(g) makes it clear that only the employees who are performing an activity comparable to the "Director, Manager, Secretary" shall be covered under this Act. Only the Senior Management Team involved in the executive function should be treated as a Public Servant. This argument also draws strength from various High Court and Supreme Court decisions (Supra) in declaring various person as Public Servants.

2.16.7 There are some State Act which define the term 'officer'. For instance the West Bengal Societies Registration Act defines the term officer as:

"(e) "officer" means a member of the Governing Body, the President, the Secretary or any other office-bearer of a society and includes also an employee of the society whose work is not of a purely ministerial nature"

The definition of an 'officer' is not directly relevant as the Act (as discussed above) refers to 'other Officer'. In other words it refers to a particular category of officers who execute functions comparable to a Director, Secretary or Manager.

WHAT WILL BE COVERED IN COMPUTING RS. 10 LAKH FOR FC ORGANIZATIONS

2.17.1 The LLA 2013 covers NGOs which are receiving donation from foreign sources amounting to Rs.10.00 lakh or more in a year. It may be noted that Section 14(1)(h) provides that 'in receipt of any donation from any foreign source.....'. As only the word `donation' is specified in the LLA 2013, it implies that other sources of income even from foreign sources other than donation would not be covered. For example foreign contribution consisting of rental income from FC assets or sale of FC assets should not be considered while determining applicability of this act.

RETURNS FROM HOW MANY YEARS TO BE FILED

2.18.1 All 'Public Servants' have to file declaration of assets and liabilities under Section 44 of LLA 2013 for 3 years as on (01.08.2014, 31.03.2015 & 31.03.2016). The relevant Notification no. 407/12/2014-AVD-IV(B) Dtd. 12.04.2016 is provided in *Annexure 6*.

2.18.2 The present requirement is to disclose information relating to last 3 years which raises the following issues:

– **In case of NGOs covered due to receipt of Central Govt. grant and the amount of grant for eligibility is specified recently, whether officers of such NGOs are required to disclose even for the earlier years when such limit was not specified?**

In our opinion since the applicability limit has been announced recently, the law should apply for the immediately preceding return for the year 2015-16 prospectively.

– **In case of NGOs covered due to receipt of Rs. 10 lakh or more grant from foreign sources where the Nodal Ministry is specified recently, whether officers of such NGOs are required to disclose even for the earlier years when such limit was not specified?**

In our opinion since the applicability limit has already been provided in the LLA 2013 and the Nodal Ministry has been notified only recently and therefore the law should apply for all the three immediately preceding returns as specified.

– **What shall be the applicability for those officers who have become officers only during 2015-16?**

In our opinion since the applicability should be prospective, it should apply from the year such employee became Public Servant unless he was also a Public Servant in his/her preceding job.

– **In cases where Secretary or Executive Board Members have left the Board during FY 2015-16 much before the limit for coverage is specified?**

In our opinion the law will apply even to the Public Servants who have left Public Service but where covered as Public Servants during the relevant year.

The annual return and various forms are provided in *Annexure 7.*

CONSEQUENCE OF NON-DECLARATION

2.19.1 Under Section 45 of LLA 2013 if a Public Servant willfully fails to declare assets and liabilities or provides misleading information then such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means.

Provided that the competent authority may condone or exempt the Public Servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

2.19.2 As per the Circular no 1541 Dtd. 20.06.2013, in case where such Public Servant or Director and Officers of NGOs do not make declaration of their assets, it will be treated as an offence and the Lokpal shall have the power to initiate inquiry and even confiscate the assets of such officers.

In this context it must be noted that Public Servants are liable to inquiry, if a complaint is made against them to the Lokpal. Any member of the public can file such a compliant. If the Lokpal finds evidence of corruption against the public servant, a case would be filed. As an interim measure, Lokpal may also order confiscation of assets acquired through corrupt means.

FORMS TO BE FILED

2.20.1 As the date for filing of returns by public servants has been deferred, the recent amendment to the LLA, 2013 on 29th July 2016 and the subsequent notification No. 407/16/2016-AVD-IV(LP) released on 1st December 2016 by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) (see Annexure 4) the form and manner of declaration of assets and liabilities under the LLA, 2013 has been deferred till a format for filing returns under Lokpal & Lokayukt as Amendment Act 2016 is released by the Central Government.

Annexure 1

NOTIFICATION NO.1541 DT. 20.06.2016

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

Notification No. 1541
New Delhi, the 20th June, 2016

S.O 2154(E) – In exercise of the powers conferred under sub-clause (vii) of subsection

(1) of section 2 read with clause (g) of sub-section (1) of section 14 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014) (thereafter in this notification referred to as the said Act), the Central Government hereby notifies that for any person referred to in clause (g) of subsection

(1) of section 14 of the said Act, the Minister-in-charge of the Ministry or Department of the Government of India providing financial assistance to any society, association of persons or trust, referred to in the aforesaid clause, shall be the competent authority;

Provided that if a society or association of persons or trust, referred to in the said clause (g) is financed by more than one Ministries or Departments of the Government, the Minister-in-charge of the Ministry or Department, whose contribution as financial assistance to the said society or association of persons or trust is highest in the year for which declaration or annual return is being filed, shall be the competent authority in respect of such society or association of persons or trust during that particular year.

2. For the purpose of this notification:-

(i) the original declaration or annual return may be filed before the Ministry or

Department making the highest contribution as financial assistance and a copy of the return may be sent to all other Ministries or Departments financing such society or association of persons or trust;

(ii) the annual returns shall continue to be filed by the category of public servants referred to in paragraph (1), till such time the entire financial assistance allowed to such society or association of persons or trust stands fully utilized for the purposes for which it was allowed;

(iii) the competent authority with which such annual return is to be filed may vary from year to year based on the Ministry or the Department whose contribution as financial assistance to the said society or association of persons or trust is highest in the year;

(iv) the expression “every other society” means a society not covered under clause(g) of sub-section (1) of section 14 of the said Act.

[F. No.407/02/2016-AVD-IV(Lokpal)Pt.2

Annexure 2

NOTIFICATION NO.1542 DT. 20.06.2016

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

Notification No. 1542
New Delhi, the 20th June, 2016

S.O 2154(E) – In exercise of the powers conferred under sub-clause (vii) of subsection

(1) of section 2 read with clause (g) of sub-section (1) of section 14 of the Lokpal and Lokayukt Act, 2013 (1 of 2014) (thereafter in this notification referred to as the said Act), the Central Government hereby notifies the amount of annual income of society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government as referred to in clause (g) of sub-section (1) of section 14 of the said Act for being under the jurisdiction of Lokpal, shall be "one more rupees".

For the purpose of this notification only the grants or financial assistance given by the Central Government may be taken into consideration for determining the annual income.

[F. No.407/02/2016-AVD-IV(Lokpal)Pt.2]

JISHNU BARUA, Jt. Secretary

Annexure 3

NOTIFICATION NO.1543 DT. 20.06.2016

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

Notification 1543
New Delhi, the 20th June, 2016

S.O 2154(E) – In exercise of the powers conferred under sub-clause (vii) of clause (c) of sub-section (1) of section 2 read with section 14 of the Lokpal and Lokayaktas Act, 2013

(1 of 2014) (hereafter in this notification referred to as the said Act), the Central Government hereby notifies that the "Competent Authority" in relation to public servants referred in clause

(h) of sub-section (1) of section 14 of the said Act, shall be Minister-in-charge of the Ministry of Home Affairs.

2. For the purpose of this notification:-

(i) the original returns to receipt of any donations from any foreign source under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) shall continue to be filed by any person who is or has been a director, manager, secretary or other officer of every other society association of persons or trust (whether registered under any law for the time being in force or not), till such time the entire amount of the donation aforesaid, received by such society or association of persons or trust stands fully utilized.

(ii) the expression "every other society" means a society not covered under clause (f) of sub-section (1) of section 14 of the Lokpal and Lokayukas Act, 2013.

[F. No.407/02/2016-AVD-IV(Lokpal)]

Annexure 4

NOTIFICATION

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 29th July, 2016.G.S.R.747(E).-

In exercise of the powers conferred by sub-section (1) read with clause (k) and clause (m) of sub-section (2) of section 59 read with section 44 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014), the Central Government hereby makes the following rules further to amend the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014, namely:-

1. (1) These rules may be called the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Second Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette. 2. In the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014, in rule 3, in sub-rule (2),- (a) in the first proviso, for the words and figures "on or before the 31st day of July, 2016", the words and figures "on or before the 31st day of December, 2016" shall be substituted; (b) in the second proviso, for the words and figures " on or before the 31st day of July, 2016", the words and figures "on or before the 31st day of December, 2016" shall be substituted; (c) after the second proviso, the following proviso shall be inserted, namely:- "Provided also that the public servants who have filed declarations, information and annual returns of property under the provisions of the rules applicable to such public servants, shall file the revised declarations, information or as the case may be, annual returns as on the 30 day of March, 2016, to the competent authority on or before the 31 m day of December, 2016." .

[F.No.407/16/2016-AVD-IV(LP)] JISHNU BARUA, Jt. Secy.

NOTIFICATION

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 29thJuly, 2016.G.S.R.747(E).-

In exercise of the powers conferred by sub-section (1) read with clause (k) and clause (m) of sub-section (2) of section 59 read with section 44 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014), the Central Government hereby makes the following rules further to amend the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014, namely:-

1. (1) These rules may be called the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Second Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette. 2. In the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014, in rule 3, in sub-rule (2),- (a) in the first proviso, for the words and figures “on or before the 31st day of July, 2016”, the words and figures “on or before the 31st day of December, 2016” shall be substituted; (b) in the second proviso, for the words and figures “ on or before the 31st day of July, 2016”, the words and figures “on or before the 31st day of December, 2016” shall be substituted; (c) after the second proviso, the following proviso shall be inserted, namely:- “Provided also that the public servants who have filed declarations, information and annual returns of property under the provisions of the rules applicable to such public servants, shall file the revised declarations, information or as the case may be, annual returns as on the 30 day of March, 2016, to the competent authority on or before the 31 m day of December, 2016.” .

[F.No.407/16/2016-AVD-IV(LP)] JISHNU BARUA, Jt. Secy.

Annexure 5

No. 407/16/2016-AVD-IV(LP)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi, the 15th December, 2016

Office Memorandum

Subject: Declaration of Assets and Liabilities by public servants under amended section 44 of the Lokpal and Lokayuktas Act, 2013 – reg.

The undersigned is directed to refer to this Department's OM of even number dated 29th July, 2016 (copy enclosed) regarding the furnishing of information relating to assets and liabilities by public servants under section 44 of the Lokpal and Lokayuktas Act, 2013 (the Act).

2. In this regard it is stated that with the passing of the Lokpal and Lokayuktas (Amendment) Act, 2016 (copy enclosed), the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014 and all the amendments made thereto have become redundant.

3. The Lokpal and Lokayuktas (Amendment) Act, 2016, as referred to above, substitutes the provision of section 44 of the Principal Act by the following new provision:-

"44. On and from the date of commencement of this Act, every public servant shall make a declaration of his assets and liabilities in such form and manner as may be prescribed."

4. Thus, under the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014 there is no requirement for filing of declarations of assets and liabilities by public servants now. The Government is in the process of finalising a fresh set of rules. The said rules will be notified in due course to prescribe the form, manner and timelines for filing of declaration of assets and liabilities by the public servants under the revised provision of the said Act. All public servants will henceforth be required to file the declarations as may be prescribed by the fresh set of rules.

(Rakesh Kumar)
Director
Tele: 23093180

To

1. All Secretaries to the Govt. of India (as per standard mailing list)
2. All Chief Secretaries of State Governments
3. All Administrators of the Union Territories

Copy for information and with a request for similar action, forwarded to:

(i) Secretary General, Lok Sabha
(ii) Secretary General, Rajya Sabha
(iii) Comptroller and Auditor General of India
(iv) Secretary, Election Commission of India

Copy also to:

EO(PR)/Director(CS.I)/Deputy Secretary (CS.II), DoPT

5-12-16

15 DEC 2016
जारी किया/ISSUED

(Rakesh Kumar)
Director

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—16 REGISTERED NO. DL—(N)04/0007/2003—16

भारत का राजपत्र
The Gazette of India

असाधारण
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भाग II — खण्ड 1
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PUBLISHED BY AUTHORITY

सं० 44] नई दिल्ली, शनिवार, जुलाई 30, 2016/श्रावण 8, 1938 (शक)
No. 44] NEW DELHI, SATURDAY, JULY 30, 2016/SHRAVANA 8, 1938 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 30th July, 2016/Shravana 8, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 29th July, 2016, and is hereby published for general information:—

THE LOKPAL AND LOKAYUKTAS (AMENDMENT) ACT, 2016

No. 37 OF 2016

[29th *July*, 2016.]

An Act to amend the Lokpal and Lokayuktas Act, 2013.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Lokpal and Lokayuktas (Amendment) Act, 2016. Short title and commencement.

(*2*) It shall be deemed to have come into force on the 16th day of January, 2014.

2. On and from the date of commencement of the Lokpal and Lokayuktas Act, 2013 (hereinafter referred to as the principal Act), for section 44, the following section shall be substituted, and shall be deemed to have been substituted, namely:— Amendment of section 44.

1 of 2014.

"44. On and from the date of commencement of this Act, every public servant shall make a declaration of his assets and liabilities in such form and manner as may be prescribed.". Declaration of assets.

Annexure 6

DEFINITION OF PUBLIC SERVANT UNDER THE SECTION 14 OF THE LLA 2013 & JURISDICTION IN RESPECT OF INQUIRY

2(*1*) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,—

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approves of such inquiry:

Provided further that any such inquiry shall be held *in camera* and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

b) any person who is or has been a Minister of the Union;

c) any person who is or has been a member of either House of Parliament;

(*d*) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (*i*) and (*ii*) of clause (*c*) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the Union;

(e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (*i*) and (*ii*) of clause (*c*) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (*1*) of section 20;

(*f*) any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it:

Provided that in respect of such officers referred to in clause (*d*) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause

(g) but are working in connection with the affairs of the State or in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government;

(*h*) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;

(*i*) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

Explanation —For the purpose of clauses (*f*) and (*g*), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (*c*) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in clause (2) of article 105 of the Constitution.

(*3*) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (*1*), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (*1*):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

(*4*) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

Explanation —For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

DEFINITION OF 'PUBLIC DUTY' & 'PUBLIC SERVANT' UNDER THE PREVENTION OF CORRUPTION ACT 1988

2(b) "Public Duty" means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.-In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956.

2(c) ”Public Servant” means-

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority ;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(iii) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(x) any person who is a chairman, member or employee of any Service

Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by what ever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority-

Explanation 1 - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 - Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

FOREIGN DONOR & OTHERS UNDER PRIOR PERMISSION CATEGORY

INTRODUCTION

1.1.1 The Central Government has special powers under section 11(3)(iv) of FCRA 2010 to put any foreign donor or donors under prior permission category. The text of Section 11(3) is provided hereunder :

"11(3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify—

(i) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or

(ii) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government;

(iii) the purpose or purposes for which the foreign contribution shall be utilized with the prior permission of the Central Government; or

(iv) the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government."

Infact the FCRA, 2010 empowers to create the various prior permission categories as discussed later in this chapter.

3.1.2 The Central Government has the power to put any foreign donor or donors under prior permission category only through a notification in the Official Gazette. Any such order will not be valid if it is not notified in the Official Gazette under section 11(3)(iv).

RBI CIRCULAR ON FOREIGN DONOR AGENCIES UNDER PRIOR PERMISSION

3.2.1 The Reserve Bank of India (RBI) in the past has issued circular with regard to the list of foreign donor agencies under prior permission category. The latest circular no. RBI/2014-15/408, DCBR.BPD (PCB/RCB) Cir. No.13/14.01.062/2014-15, January 15, 2015 is provided in Annexure 1.

3.2.2 In this circular the RBI has quoted that an order has been passed by the Central Government under Section 46 of FCRA, 2010. By virtue of such order under Section 46 the bankers have been directed to put certain specific donors under prior permission category. The list of donors is as under :

3.2.3 In this regard it may be noted that Section 46 does not provide any additional discretionary power to Central Government. It only empowers the FCRA department to direct other agencies to act on its behalf in implementation of the existing provisions of the Act.

The text of Section 46 & 47 is reproduced as under :

Section 46 - Power of Central Government to give directions.

"46. The Central Government may give such directions as it may deem necessary to any other authority or any person or class of persons regarding the carrying into execution of the provisions of this Act."

Section 47 - Delegation of powers.

"47. The Central Government may, by notification, direct that any of its powers or functions under this Act, except power to make rule under section 48, shall, in relation

to such matters and subject to such conditions, if any, may be specified in the notification, be exercised or discharged also by such authority as may be specified."

3.2.4 In this regard, it may be noted that an order under Section 46 should be based on the provisions of the Act. In other words unless a gazette notification under Section 11(3)(iv) is made no order under section 46 shall be tenable.

PERSON, AREA OR PURPOSES CAN ALSO BE PUT UNDER PRIOR PERMISSION

3.3.1 The Central Government has special powers under section 11(3)(iv) of FCRA 2010 to put various other persons/areas /purposes under prior permission under section.

The text of Section 11(3) is provided hereunder :

"11(3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify—

(i) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or

(ii) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government;

(iii) the purpose or purposes for which the foreign contribution shall be utilized with the prior permission of the Central Government; or

(iv) the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government."

3.3.2 The Central Government has the power to put any person, area or purpose under prior permission category only through a notification in the Official Gazette. Any such order will not be valid if it is not notified in the Official Gazette.

POWERS OF FCRA UNDER SECTION 9(D) TO PUT UNDER PRIOR PERMISSION

3.4.1 Under Section 9(d), the FCRA department can ask a FC registered organisation to seek prior permission before receiving any foreign contribution. This section is about putting a registered organisation under prior permission category for all FC receipt and not only for a particular foreign source. Secondly, this provision can be applied only if the Government has reasons to believe that acceptance of such contributions will result in hampering public interest, religious harmony etc. Such orders are against the Indian FC registered organisations and therefore they cannot be made without:

(i) Providing an opportunity of being heard: Though this section does not specifically speak about opportunity of being heard. The Delhi High Court in the INSAF case [see para 1.9.1] held that the FCRA Department was duty bound to provide an opportunity of being heard before acting under section 9(d) or suspending the registration under section 13 even though there was no provision with regard to providing an opportunity of being heard.

(ii) Communicating such order to the Indian FC registered organisation.

(iii) There is nothing in the section to suggest that the condition of prior permission can be for a particular source of income :In other words, Section 9(d) cannot be invoked to block receipt of foreign fund from any particular donor.

(iv) Order under section 9(d) can only be passed for organization registered under FCRA (as specified in section 11) : In other words, such orders cannot be passed against any foreign donor agencies under this particular section.

(v) Section 9(d) starts with the words 'without prejudice to the provisions of section 11(1)' : Therefore, section 9(d) has to be applied in conjunction with the privileges available section 11(1).

POWERS OF FCRA UNDER SECTION 11(3)(IV) TO PUT UNDER PRIOR PERMISSION

3.5.1 Section 11(1) is the section for registration under FCRA and section 11(2) is the section for prior permission for specific purposes. Section 11(3)(iv) provides that certain foreign source can be put under prior permission category. This is the only section where the Central Government can specify a particular foreign source under prior permission category. However any order under this section has to be notified in the official gazette.

PRINCIPLE OF NATURAL JUSTICE TO BE APPLIED

3.6.1 The Delhi High Court has ruled against the FCRA Department in the case Green peace India Society vs. Union of India W.P. (C) 5749/2014 Dtd. 20.01.2015 and has ordered that section 9 of FCRA Act is subject to principle of natural justice. A coercive order cannot be passed against the appellant without any notice or intimation.

NO DISCRETIONARY POWER UNDER SECTION 46

3.7.1 Section 46 under which the direction to the RBI has been made does not provide any discretionary power to the Central Government It only empowers the Government to direct other authorities or take help of other authorities in executing the provisions of the Act. In other words, Section 46 is subject to the existing provisions of the Act.

PREAMBLE OF THE ACT DOES NOT INCLUDE FOREIGN ENTITIES

3.8.1 The preamble to the FCRA Act states that the mandate of the Act is confined to the acceptance and utilization of foreign contribution by certain individuals and organizations (implicitly Indian). In other words, it is beyond the mandate of the Central Government to pass an order against any foreign entity, though, it can restrict an Indian organization from receiving funds from a foreign entity. Therefore an order has to be passed against the Indian entity or group of entities. Further all such orders have to be passed after providing an opportunity of being heard to aggrieved FC organisation.

POWER OF SUSPENSION UNDER SECTION 13

3.9.1 Similarly under section 13, FCRA Department has the authority to suspend the registration of an organization without providing an opportunity of being heard. Even under this provision it has been held that the FCRA Department is duty bound to provide an opportunity of being heard. The Delhi High Court in the case Indian Social Action Forum (INSAF) vs. Union of India W.P.(C) 4982/2013 & CM 11248/2013 has held that no order of suspension can be made unless a show cause is issued and the reasons for such suspension are provided in writing. The Delhi High Court further explained that the suspension powers provided in the Act are intended to be used primarily when any cancellation proceeding is initiated. Therefore, any unilateral suspension of FCRA registration will not be legally sustainable.

OPPORTUNITY IS A PRECONDITION FOR PUTTING UNDER PRIOR PERMISSION CATEGORY

3.10.1 There is a landmark case of Delhi High Court AVARD vs. Union of India R.F.A No. 557 of 1988. In this case it was held that Central Government had no power to put an organization under prior permission category without providing an opportunity of being heard.

FINANCE

1. ADMINISTRATIVE EXPENDITURES
2. OVERVIEW OF FUND ACCOUNTING
3. DIFFERENCE BETWEEN COMMERCIAL AND FUND ACCOUNTING SYSTEMS.

ADMINISTRATIVE EXPENDITURES

INTRODUCTION

1.1.1 The main objective of this chapter is to provide guidance on the assessment of administrative expenditure and the policy with regard to apportionment of such expenditures. The important issues/questions in this regards are as under :

1.1.2

- Has the organisation assessed and booked the administrative expenditures separately?
- Is there a clearly defined policy with regard to expenditure apportionment between programme heads and administrative heads, particularly expenditures such as salaries, travel, etc.?
- The administrative expenditure should be distinguished from fund raising expenditure and the core cost of the organisation even without projects and programme activities.
- What is the percentage of administrative expenditure to total expenditure ? The percentage of administrative expenditure to total expenditure should be reasonable, anything in the range of 20% is acceptable. The administrative expenditure may vary according to the size and nature of activity.
- What is the ratio of administrative expenditures to programme expenditures?
- Is the total travel expenses at board and senior management level separately assessed and documented? Is such expenditure reasonable with regard to the activities?
- Is the administrative expenditure in compliance with the donor's agreement?
- Is the administrative expenditure in compliance with legal statutes such as the Foreign Contribution Regulation Act, 2010 and the Indian Income Tax Act, 1961?

GENERAL NOTES ON ADMINISTRATIVE EXPENDITURE

1.2.1

- Administrative expenditure is an eternal challenge for the NPOs. High administrative expenditure decrease the amount available for programmes and very low administrative cost may affect the quality of the programme.
- Administrative expenditure may pertain to the core cost of the NPO. It may also pertain to the specific project. The distinction between the two is important.
- There is a general understanding that expenditures such as salaries and travel are administrative in nature. However, salaries can also be entirely programme related. It is very important that the NPO distinguishes the salaries in categories such as core administration, programme administration and programme cost. Sometimes it may be necessary to apportion a part of the salary/expenditure as programme or administrative expenses.

ADMINISTRATIVE AND ESTABLISHMENT ADMINISTRATIVE AND ESTABLISHMENT EXPENSES AS PER INCOME TAX LAW EXPENSES AS PER INCOME TAX LAW

1.3.1 Administrative and establishment expenses have always remained an issue for judicial and legislative debate under the Income Tax Laws. The prime issue in this regard is whether the income available for charitable or religious purposes should be considered after deducting administrative and establishment expenses or should they be considered as an application for charitable or religious purposes. Or to what extent establishment expenditure would be permitted because there might be a circumstance where the activities are dormant but establishment expenditure still continues.

1.3.2 ***The view of Income Tax department :*** The view of the Income Tax department seems to be towards deducting administrative and establishment expenses from the total income to determine the income available for application for charitable purposes. Establishment or administrative expenses are considered as a charge to the income of the organisation and, therefore, only the net income **25.04*The view of Income Tax department :*** The view of the Income Tax department seems to be towards deducting administrative and establishment expenses from the total income to determine the income available for application for charitable purposes. Establishment or administrative expenses are considered as a charge to the income of the organisation and, therefore, only the net income after such expenses is available for charitable purposes. Circular No. 5-P (LXX-6) of 1968, dated June 19, 1968, states that the income should be computed on the basis of normally accepted commercial principles. Therefore, it implies that establishment expenses should be deducted in order to determine the net income available for charitable purposes. The relevant extracts of the said circular are as under :after such expenses is available for charitable purposes. Circular No. 5-P (LXX-6) of 1968, dated June 19, 1968, states that the income should be computed on the basis of normally accepted commercial principles. Therefore, it implies that establishment expenses should be deducted in order to determine the net income available for charitable purposes. The relevant extracts of the said circular are as under :

"Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word 'income' should be understood in its commercial sense, *i.e.,* book income, after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income, computed in the aforesaid manner, should be not less than 75 per cent of the latter, if the trust is to get the full benefit of the exemption under section 11(1)."

WHETHER SUCH EXPENSES AMOUNT TO APPLICATION OF INCOME FOR CHARITABLE PURPOSES WHETHER SUCH EXPENSES AMOUNT TO APPLICATION OF INCOME FOR CHARITABLE PURPOSES

1.4.1 There seems to be a generic treatment to the establishment expenses and they are considered as application for charitable purposes along with other items of expenses, though in strict commercial/accounting sense, such treatment is debatable. The establishment expenses are a charge on the income and 'application' is analogous

to 'appropriation' of the income available for charitable purposes. Administrative and establishment expenses could be of various categories, some part of which could be directly attributed to the generation of income and some part could be towards charitable or religious purposes. This issue has been debated in various cases, whether establishment expenses can be considered as application for the objects of the organisation.

– In *CIT* v. *Birla Janahit Trust* [1994] 208 ITR 372 (Cal.), the Court opined that *expenses incurred for running a trust should be considered to have been applied for the objects of the trust.* In this case, reference to various other cases was also made. The following extracts are very relevant in this regard :

"It appears from the order of the Appellate Assistant Commissioner that the assessee has incurred the expenditure on salaries and miscellaneous expenses for the purpose of carrying out the objects and purposes of the trust and not only to earn the income from dividend. It is now well-settled that in determining the portion of income applied or accumulated for charitable or religious purposes, regard should be had to the trust income in a commercial sense or according to the accounts of the trust and not the total income as computed under the provisions of the Income-tax Act. Our attention has been drawn to several decisions in this connection. In *Deo Radha Madhava Lalji Genda Trust* v. *Property Tax Officer* [1980] 125 ITR 531 (MP), it has been observed that tax liability and other outgoings in respect of the trust property are all incidental expenses relating to and connected with the main objects of the trust, which are exclusively religious and charitable. If the trust property is not properly maintained and proper accounts are not kept, the very existence of the trust would be in jeopardy and its object and purpose would be lost. In this view of the matter, simply because a part of the rental income is spent in the maintenance, repairs, payment of salaries to employees, taxes and legal expenses, etc., it could not be said that the income derived from the trust property was not applied exclusively to religious or charitable purposes." (p. 375)

1.4.2 In *Gem &Jewellery Export Promotion Council* v. *ITO* [1999] 68ITD 95 (Mum.), the Tribunal held that the entire non-code expenditure could not be said to have been incurred towards earning of the income and, therefore, only that portion of the expenditure-which could be attributed to the earning of income should be deducted from the gross income for computing the income on which application and accumulation under section 11(1)(*a*) was allowed. The following extracts are relevant in this regard:

"It is clear from the decisions cited above, that it is the income computed on commercial principles which is available for purposes of accumulation under section 11(1)(*a*). The contention that in the case of Trust, gross receipts is the income of the Trust, in the light of the above decisions, we find is not well founded. We accordingly hold that the income available for accumulation under section 11(1)(*a*) is the income as computed on commercial principles, as also taking into account the provisions of the Income-tax Act, 1961.

We, however, agree with the contention on behalf of the assessee, that the entire non-code expenditure cannot be attributed to the earning of the income of the assessee. The contention of the assessee that only a small portion of the expenditure is attributable to the earning of income shall have to be determined by the revenue authorities, after giving an opportunity of being heard to the assessee. For that purpose, the issue is set aside and remitted to the Assessing Officer for working out the

expenditure to be deducted out of the gross income, for the purpose of determining the income and then working out the 25% of the same for accumulation."

1.4.3 In other words, the expenditure which can be precisely or reasonably be attributed to earning of income should be deducted first to determine the income available for charitable purposes, the rest portion of expenditure shall be treated as applied towards charitable purposes.

ADMINISTRATIVE EXPENSES UNDER FCRA

1.5.1 FCRA 2010 prescribes that the administrative expenditure in any year should not exceed 50% of the total utilisationof FC funds received in that year. For the purpose of determining the administrative expenditure Rule 5 of FCRR 2011 provides the list of expenditure which shall be treated as administrative in nature.

1.5.2 The text of Rule 5 of FCRR 2011 is as under :

"Administrative expenses - *The following shall constitute administrative expenses:-*

(i) salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person;

(ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;

(iii) all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;

(iv) cost of accounting for and administering funds;

(v) expenses towards running and maintenance of vehicles;

(vi) cost of writing and filing reports;

(vii) legal and professional charges; and

(viii) rent of premises, repairs to premises and expenses on other utilities:

Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

Provided further; that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisation shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc."

1.5.3 It can be seen that the definition of administrative expenses includes various expenses such as rent, vehicles etc. which may also be incurred for programme purposes. Therefore, the scope of the Rule is more important than the traditional understanding of administrative expenses. In other words, some expenditure may be related with the programmes but for the purpose of FCRA 2010 they shall be treated as administrative expenditure if such expenditure fall under the list of expenditures defined in the Rule above. For example, the salary of the programme director may be treated as administrative expenditure. However, in order to accomodate such aberrations, the limit of administrative expenditure has been kept at a high level of 50%.

1.5.4 The definition of administrative expenditure briefly is as under :

- Remuneration and other expenditure to Board Members and Trustees.
- Remuneration and other expenditure to persons managing activity.
- Expenses at the office of the NPO.
- Cost of accounting and administration.
- Expenses towards running and maintenance of vehicle.
- Cost of writing and filing reports.
- Legal and professional charges.
- Rent and repairs to premises.

The Rule further provides that the following salaries shall not be considered as administrative in nature :

- Salaries of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training (1st proviso)
- Expenses related to activities, for example, salaries to doctors of hospital, salaries to teachers of school etc. (2nd proviso)

1.5.5 From the above definition of administrative expenses, the following expenditures may be carefully ascertained.

- All kinds of vehicle expenditure has been considered as administrative in nature. However, the last proviso provides that expenses for furtherance of activity shall be excluded. Therefore, all direct programme related vehicle expenses and other expenditures are excluded from calculation of administrative expenses. All vehicle expenditure other than those which could be established as 'directly incurred on activities' shall be treated as administrative expenses.
- The Rule includes the salaries of persons engaged in management of activity and at the same time the proviso as discussed above also applies. Therefore, salaries paid to all the staff directly engaged in implementation of the programmes shall be treated as programme expenditure. However, salary of senior management persons shall be treated as administrative expenses.

1.5.6 ***Is separate Accounting Necessary:*** It is not necessary to maintain separate books of account showing the administrative expenditure as per FCRR 2011. However, the organisation should be in a position to clearly segregate the expenditure, which is administrative in nature, in the books of account. In other words, the organisation may not maintain separate ledger heads based on the FCRR 2011 rules for administrative expenditure but it should have the detail and the supporting accounts to justify the percentage of administrative expenditure for the purposes of audit and reporting, if necessary.

1.5.7 ***Is Admin. Expenditure required to be reported to FCRA Authorities :***Under the current scheme of law the administrative expenditure is not required to be reported to the FCRA authorities. It is a statutory compliance which the organisation has to follow. The annual return form FC-6 also does not require the reporting of administrative expenditure. However, the Central Government may call for such information and records.

OVERVIEW OF FUND ACCOUNTING

INTRODUCTION

2.1.1 Fund accounting is a system of accounting which is peculiar to NPOs or not-for-profit organisations. Separate records are kept for funds created for certain specified purposes, which may be restricted or unrestricted in nature.

A fund can be defined as

"a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations".

2.1.2 In other words separate funds based on regulations, restrictions and limitations are required to be set up. The restrictions or designations may be placed by the donors or the management. Each fund must be treated as a separate entity and should have its own individual receipt and payment account, income and expenditure account and balance sheet. The individual funds should be consolidated and reflected in the overall statements of the entire organisation.

2.1.3 Fund Accounting is generally based on the activities and objectives as specified by the donors or outside agencies. Expenditures and resources are segregated in accordance with the source and the conditions attached thereof. However, the trustee/board of the NPOs may also create and designate various funds and also lay down appropriate conditions and norms for each fund.

CHARACTERISTICS & ADVANTAGES OF FUND ACCOUNTING

2.2.1 Maintenance of financial records on the principles of fund accounting helps in meticulous analysis of each independent activity separately. For instance, if an NPO is engaged in several projects simultaneously, fund accounting will provide precise information with regard to each and every project at any point of time. Some instances of such information could be :

- available cash and bank balance under that particular project
- investment held under that particular project
- any surplus or deficit in the project
- loan given or taken from other project
- administrative component of that project, etc.

2.2.2 The availability of financial informations in a project-wise or fund-wise form enhances the financial transparency as well as decision-making. Some distinct advantages could be enumerated as under :

i) Measurement of project-wise and fund-wise performance

ii) Measurement of project-wise and fund-wise cost of activities and services

iii) Project-wise and fund-wise management of funds

iv) Project-wise and fund-wise management of assets

v) Analysis of the impact of financial decisions

vi) Identification of project-wise and fund-wise manpower and cost allocation

vii) Inter-project fund transfers and recoveries thereof

2.2.3 From the above analysis, it is clear that fund accounting can help in providing various kind of fund/project based informations, which not only caters to the reporting requirements but also help in the decision making processes of the NPO. In the subsequent chapters, we will try to understand the various principles and characteristics of fund accounting. We will also try to understand the processes and intricacies involved in implementation of a fund accounting system.

DIFFERENCE BETWEEN COMMERCIAL AND FUND ACCOUNTING SYSTEMS

INTRODUCTION

3.1.1 Commercial organisations have accounting systems that measure product, division and company performance by profit and loss. Accounting in NPOs is also required to measure the inflow and outflow of funds. In addition NPOs also have social and legal responsibilities that extend beyond spending their money wisely. Fund accounting systems help in meeting various social and legal responsibilities which normal accounting systems cannot. Some features of fund accounting are as under:

- Tracking and reporting accounting records separately for different funding sources, grants, programmes etc. and being able to allocate expenses across these groups of records
- Tracking and reporting across different time periods (frequently not on annual basis), which may extend to multiple fiscal years
- Keeping funds separately according to donor's restrictions
- Measuring and analysing the success or failure of each programme or fund individually
- Tracking the ratio of overhead to programme expenses
- Producing specialised and specific reports for internal and external purposes

PURPOSE OF FINANCIAL STATEMENT IS DIFFERENT FOR NPOS

3.2.1 In commercial accounting, financial statements are prepared with a specific purpose for each statement. A profit and loss account is prepared to ascertain the profit and loss during the year. If a company shows high profits then it reflects its success and if it shows losses, it reflects failure. The deficit or surplus in the profit and loss account is directly related with the success or failure of a commercial organisation. However, in an NPO the excess or deficit in an income and expenditure account may not provide any meaningful indication of its success or failure. Suppose an NPO is showing very high income over expenditure, but such high surplus may reflect the inability to spend fund for charitable purposes. Therefore, something which is termed as a success in the commercial world may be treated as a failure in the NPO world.

3.2.1 Similarly, in the commercial world if the profit and loss account is showing losses it would surely be considered as a failure or negative sign. However, if an NPO is showing excess of expenditure over income it may be a positive sign. The NPO might have done some exemplary work where some money from its past reserves were also spent. On the contrary, due to mismanagement or inefficiencies the cost may have escalated resulting in excess of expenditure over income. Therefore, the deficit in the income and expenditure account cannot conclusively indicate anything about the work or activities of the NPO. It is necessary to obtain more precise and meticulous details of the income or expenditure in order to make any meaningful analysis.

3.2.2 The moot point is the meaninglessness of conventional accounting statements in context of an NPO. The income and expenditure account fails to provide any definite message about the quality and efficacy of the programmes.

3.2.3 Similarly, a balance sheet is prepared to signify the state of assets and liabilities at the end of the year. In the balance sheet of a commercial organisation the reader can find

- The quantum of external borrowings

– The ratio of equity to loans
– The unsecured and secured loans
– The creditors
– The debtors
– The currents assets, etc.

3.2.4 Each one of the above can provide a definite insight about the health of a commercial organisation. However, again in the case of an NPO it makes very little sense if we try to understand the health of the programme or project through a conventional balance sheet. We will not be able to know

– the closing balances of individual projects
– negative project balances, if any
– investments pertaining to specific funds
– project-wise assets details
– break-up of capital/endowment funds
– break-up of current restricted funds
– break-up of current unrestricted funds, etc.

3.2.5 The fundamental difference between an NPO and a commercial organisation is the differential approach towards finance and activities. A commercial organisation does activities to maximize its capital or profits. Therefore, all the energies of a commercial organisation are spent in maximizing the profits. On the contrary, NPOs by their inherent constitution do not have any profit motive. All their energies are channelised in maximising the quality of the programme or activities irrespective of whether they are making profits or losses. The donors or the stakeholders will not appreciate if the NPO is amassing huge wealth or is making huge surpluses from its programme. The reader of the financial statements of an NPO is interested in understanding

– the level of competence and efficiency in management of financial resources
– whether the conditions attached to the grants have been complied with or not
– whether different funds coming from different sources have been properly invested and managed according to the conditions attached by the donors
– whether all endowments created are intact and are as per the norms laid down
– whether administrative expenditures are reasonable in comparison to programme expenses, etc.

3.2.6 The conventional accounting statements may not provide any meaningful insight into the above discussed issues. Therefore, it becomes necessary to maintain sub-system and specific details to generate the desired information. Fund accounting is one such tool which helps in providing answers to many NPO specific queries. For instance, NPOs create endowments and corpus which may be from internal or external sources. If an endowment fund is created, then it implies that certain amount of funds are blocked permanently or on long term basis for certain specific purpose of activities. Now, it becomes important that the NPO as well as the external stakeholders know about the management and methodology involved in such fund. Therefore, the NPO has to maintain separate details for investment, assets, cash and bank balances on account of this particular fund. Similarly, the NPO also has to separately maintain the detail of expenditures made on account of this fund. Fund accounting becomes necessary for maintaining specific fund or activity-wise detail.

CSR

1. PROVISIONS OF COMPANIES (CSR) RULES, 2014
2. NET PROFIT & CSR EXPENDITURES

PROVISIONS OF COMPANIES (CSR) RULES, 2014

UNDERSTANDING THE PROVISIONS OF CSR RULES, 2014

1.1.1 The Ministry of Corporate Affairs has notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 ('the Rules') to be effective from 1 April, 2014. These Rules provide the detailed manner in which CSR is to be implemented. The text of the Rules is provided in ***Annexure 2.***A brief overview of the Rules is discussed hereunder.

DEFINITION OF CSR AS PER RULES

1.2.1 As per the clause 2(1)(c) CSR is defined as under :

"'Corporate Social Responsibility (CSR)' means and includes but is not limited to :—

(*i*) Projects or programs relating to activities specified in Schedule VII to the Act; or

(*ii*) Projects or programs relating to activities undertaken by the board of Directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act."

1.2.2 It may be noted that the above Rule starts with the wordings that *'CSR includes but is not limited to',* which implies that the projects and programmes can be beyond the project specified in Schedule VII. However, such broad implication will not be relevant as section 135(3)(a) categorically provide that the projects and programmes have to be as specified in Schedule VII.

CSR COMMITTEE AND CSR POLICY UNDER CSR RULES, 2014

1.3.1 As per the clause 2(1)(d) and (e) of the CSR Rules, CSR Committee and CSR Policy are defined as under :

"(*d*) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act.

(*e*) "CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;"

1.3.2 The CSR Committee and the CSR policy have not been exhaustively defined in the Rules. The Rules specifies that the CSR activities should be as per Schedule VII of the Act, though Schedule VII has to be interpreted liberally. **One notable thing is that activities undertaken in pursuance of normal course of business of a company are excluded.** There is no explanatory note in this regard, however, it is understood that a company cannot claim its normal activities as CSR. For example, a company engaged in plantation cannot claim that the plantation is made as a part of its CSR activity on environment.

NET PROFIT UNDER CSR RULES, 2014

1.4.1 As per the clause 2(1)(f) of the CSR Rules, Net Profit is defined asunder :

"(*f*) "Net profit" means the Net Profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following namely :—

(*i*) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

(*ii*) any dividend received from other companies in India, which are covered under and complying; with the provisions of section 135 of the Act:

Provided that Net Profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, (1 of 1956) shall not be required to be re-calculated in accordance with the provisions of the Act:

Provided further: that in case of a foreign company covered under these Rules, Net Profit means the Net Profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

(2) Words and expressions used and not defined in these Rules but defined in the Act shall have the same meanings respectively assigned to them in the Act."

1.4.2 The Net Profit shall be computed as per the provisions of Companies Act. The Net Profit shall not include any profit derived from foreign branches of the company. The Net Profit will also not include any dividend received from other Companies which are covered under CSR.

1.4.3 In case of Foreign Companies, the Net Profit of such company shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.

APPLICABILTY OF FOREIGN COMPANIES UNDER CSR RULES, 2014

1.5.1 As per the clause 3(1) of the CSR Rules, all company including foreign company are covered. The clause 3(1) is provided as under :

"3(1) Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfils the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these Rules:

Provided that net worth, turnover or Net Profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act."

1.5.2 It may be noted that Section 135 of the Act does not make reference to foreign company regarding applicability of CSR. The section starts with the line *"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 year shall constitute a Corporate Social Responsibility Committee....."*. The Section 135(1) refers only to a company and only the Rules include foreign company under the ambit of CSR. Legally any Rule cannot increase or decrease the scope of the Act. Under Section 2(20) of the Act, a company has been defined as *"company means a company incorporated under this Act or under any previous company law;"*.

1.5.3 Therefore, technically the Act does not cover Foreign Companies but the Rules provide that the foreign company shall also be liable. ***Whether Rules can mandate something which is not provided in the Act is a matter of legal debate.***

1.5.4 ***The issue is, can the term 'company' used in section 135 be understood in a generic sense or the definition of company as per the Act can be used.***

WHEN COMPANY CEASES TO BE UNDER CSR

1.6.1 As per the clause 3(2) of the CSR Rules, all company including Foreigncompany shall cease to be covered under CSR if it does not fulfill the financial criteria for 3 consecutive years. The clause 3(2) is provided as under :

"(2) Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to—

(*a*) constitute a CSR Committee; and

(*b*) comply with the provisions contained in sub-sections (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135."

1.6.2 In other words, even when a company ceases to come under CSR criteria, it has to continue CSR activities for 3 years. Only if the CSR criteria do not apply for three consecutive financial years, then the company can stop complying with the CSR regulations.

CSR ACTIVITIES UNDER CSR RULES, 2014

1.7.1 Clause 4(1) of the CSR Rules provides the procedure and methods to implement the CSR activities. An overview of major points provided in clause 4(1) is as under:

- The CSR activities have to be undertaken as per CSR policy. The CSR policy should be based on the permitted activities as per Schedule VII.
- The CSR activities will not include any activity undertaken in the normal course of activity.
- The Board should conduct the CSR activity on recommendations of CSR Committee.
- The Board has multiple options of implementing the CSR activities. It may implement the CSR activities :
- Directly
- Through other registered Trust, Society or Section 8 company, in this case such registered trust or society should have at least 3 years proven experience in similar activities.
- Through Trust, Society or Section 8 Company promoted by the company, in such case 3 years' experience would not be required.
- Through its holding or subsidiary company.
- In implementation a company may exercise any of the aforesaid options in collaboration with other companies. However, if CSR activities are jointly undertaken then the companies should report individually and separately.
- The company should specify the modalities of utilization and the monitoring as well as reporting mechanism.
- The CSR activity should be conducted in India only.
- Any activity for the benefit of the employees and their families shall not be considered as CSR.

– However, a company may spend up to 5% of the total CSR expenditure on the capacity building of its own personnel and the implementing organisation.

– Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

1.7.2 The text of Clause 4(1) of the CSR Rules is provided as under:

"CSR Activities

"4.(1) The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise:

Provided that—

(*i*) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;

(*ii*) 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.

(3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these Rules.

(4) Subject to provisions of sub-section (5) of section 135 of the Act, the CSR projects or programs or activities undertaken in India only shall amount to CSR Expenditure.

(5) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.

(6) 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 but such expenditure shall not exceed five per cent of total CSR expenditure of the company in one financial year.

(7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity."

CSR COMMITTEES UNDER CSR RULES, 2014

1.8.1 Clause 5(1) of the CSR Rules provides about the constitution of CSR Committee. An overview of major points provided in clause 5(1) is as under:

– It may be noted that section 135(1) requires CSR Committee with 3 or more Directors, out of which at least one should be an Independent Director.

– The CSR Rule provides explanation to the requirement of section 135(1). It provides that private company which is not required to appoint Independent Director under section 149(4), shall be exempted from appointment of Independent Director.

– A private company having only two Directors shall constitute its CSR Committee with 2 such Directors only.

– In case of foreign company the CSR Committee should comprise of at least 2 person of which one should be specified under section 380(1)(d) and another person should be nominated by such foreign company. It may be noted that under section 380(1)(d) a foreign company is required to provide the name & address of one or more persons **resident in India authorised** to accept on behalf of the company service of process and any notices or other documents required to be served on the company.

– The CSR Committee is required to develop a transparent monitoring mechanism for implementation of CSR projects.

1.8.2 The text of Clause 5(1) of the CSR Rules is provided as under :

"CSR Committees

5.(1) The companies mentioned in Rule 3 shall constitute CSR Committee as under.—

(*i*) an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an Independent Director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such Director;

(*ii*) a private company having only two Directors on its Board shall constitute its CSR Committee with two such Directors;

(*iii*) with respect to a foreign company covered under these Rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

(2) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company."

CSR POLICY UNDER CSR RULES, 2014

1.9.1 Clause 6(1) of the CSR Rules provides about the CSR policy of a company. An overview of major points provided in clause 6(1) is as under:

– The CSR Policy of the company shall include a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act.

– The CSR Policy of the company shall specify modalities of execution of such project or programs and implementation schedules for the same.

– The CSR Policy of the company shall also specify the monitoring process of such projects or programs.

– The CSR Policy of the company should ensure that the CSR activities shall not include the activities undertaken in pursuance of normal course of business of a company.

– The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

1.9.2 The text of Clause 6(1) of the CSR Rules is provided as under :

"CSR Policy

6.(1) The CSR Policy of the company shall, *inter alia*, include the following, namely:—

(*a*) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and

(*b*) monitoring process of such projects or programs:

Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.

Provided further- that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.

(2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company."

CSR EXPENDITURE UNDER CSR RULES, 2014

1.10.1 Clause 7 of the CSR Rules provides about the CSR expenditure of a company. An overview of major points provided in clause 7 is as under:

- CSR expenditure shall include all expenditure including contribution to corpus. CSR expenditure shall also include all expenditure on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee.
- CSR expenditure shall not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

1.10.2 The text of Clause 7 of the CSR Rules is provided as under:

"CSR Expenditure

7. CSR expenditure shall include all expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act."

CSR REPORTING UNDER CSR RULES, 2014

1.11.1 Clause 8 of the CSR Rules provides about the CSR reporting of a company. An overview of major points provided in clause 8 is as under:

1. The Board's Report of a company shall include an annual report on CSR in the format as provided in ***Annexure 1***.

2. In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

1.11.2 The text of Clause 8 of the CSR Rules is provided as under:

"CSR Reporting

8.(1) The Board's Report of a company covered under these Rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure.

(2) In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR."

DISPLAY OF CSR ACTIVITIES ON WEBSITE UNDER CSR RULES, 2014

1.12.1 Clause 9 of the CSR Rules provides that the company shall display on its website, the content of CSR policy and also the CSR report.

1.12.2 The text of Clause 9 of the CSR Rules is provided as under:

"Display of CSR activities on its website

9. The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure."

Annexure 1

FORMAT OF REPORTING UNDER CSR RULES, 2014

FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT

1. A 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.

2. The Composition of the CSR Committee.

3. Average Net Profit of the company for last three financial years

4. Prescribed CSR Expenditure (two per cent. of the amount as in item 3 above)

5. Details of CSR spent during the financial year.
   (a) Total amount to be spent for the financial year;
   (b) Amount unspent , if any;
   (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	CSR project or activity identified.	Sector in which the project is covered	Projects or programs (1) Local area or other (2) Specify the state and district where projects or programs was undertaken	Amount outlay (budget) project or program wise	Amount spent on the projects or programs Subheads: (1) Direct expenditure on projects or programs (2) Overheads:	Cumulative expenditureupto to the reporting period.	Amount spent: Direct or through implementing agency
1							
2							
3							
TOTAL							

** Give details of implementing agency:*

6. In case the company has failed to spend the two per cent, 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.

7. 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.

Sd/-	Sd/-	Sd/-
(Chief Executive Officer or Managing Director or Director)	(Chairman CSR Committee) (wherever applicable)	(Person specified under clause (d) of sub-Section (1) of Section 380 of the Act)

Annexure 2

COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) RULES, 2014 NOTIFICATION [FILE NO.1/18/2013-CL.V], DATED 27-2-2014

In exercise of the powers conferred under section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Rules, namely:—

Short title and commencement

1. (1) These Rules may be called the Companies (Corporate Social Responsibility Policy) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

Definitions

2. (1) In these Rules, unless the context otherwise requires,—

(*a*) "Act means the Companies Act, 2013;

(*b*) "Annexure" means the Annexure appended to these Rules;

(*c*) "Corporate Social Responsibility (CSR)" means and includes but is not limited to :—

(*i*) Projects or programs relating to activities specified in Schedule VII to the Act; or

(*ii*) Projects or programs relating to activities undertaken by the board of Directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

Provided that net worth, turnover or Net Profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

(2) Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to—

(*a*) constitute a CSR Committee; and

(*b*) comply with the provisions contained in sub-sections (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.

CSR Activities

4. (1) The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company ***established under Section 8 of the Act by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company, or otherwise: 1*** established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise:

Provided that—

(*i*) if such trust, society or company is not established by the company either ***singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company. 2 or*** its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;

(*ii*) 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.

(3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these Rules.

(4) Subject to provisions of sub-section (5) of section 135 of the Act, the CSR projects or programs or activities undertaken in India only shall amount to CSR Expenditure.

(5) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.

(6) 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 but such expenditure ***"including expenditure on administrative overheads,"3*** shall not exceed five per cent of total CSR expenditure of the company in one financial year.

(7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

CSR Committees

5. (1) The companies mentioned in Rule 3 shall constitute CSR Committee as under.—

(*i*) an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an Independent Director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such Director;

(*ii*) a private company having only two Directors on its Board shall constitute its CSR Committee with two such Directors;

(*iii*) with respect to a foreign company covered under these Rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

(2) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

CSR Policy

6. (1) The CSR Policy of the company shall, *inter alia*, include the following, namely :—

(*a*) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of

execution of such project or programs and implementation schedules for the same; and

(*b*) monitoring process of such projects or programs:

Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.

Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.

(2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

CSR Expenditure

7. CSR expenditure shall include all expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

CSR Reporting

8. (1) The Board's Report of a company covered under these Rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure.

(2) In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

Display of CSR activities on its website

9. The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure.

NET PROFIT & CSR EXPENDITURES

CSR EXPENDITURE & MODES OF IMPLEMENTATION

2.1.1 CSR expenditure shall include all expenditure including contribution to corpus or contribution towards projects or programs relating to CSR activities, approved by the Board on the recommendation of its CSR Committee. However, CSR expenditure will not include any expenditure on any item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

2.1.2 It may be noted that CSR expenditures are subject to the following conditions:

- The CSR activities have to be confined to the activities described in the Schedule VII of the Act.
- The CSR expenditure can be made directly by the company.
- The CSR expenditure can be made through registered organisations having at least 3 years' experience in similar programmes.
- The CSR expenditure can also be made through registered organisation promoted by the company. In such cases, the condition of having at least 3 years' experience in similar programmes, will not apply.

1. The company cannot make any contribution to any political party or political purpose as defined under section 182.
2. The company should give priority to the local area and the areas around it where it operates.
3. The company should spend at least 2% of the average Net Profit made during the three immediately preceding financial years.
4. The expenditure on employees shall not be permissible, unless it is upto 5% on capacity building pertaining to CSR. Further upto 5% on capacity building pertaining to CSR shall also be permissible for the implementing NPOs.
5. Activities undertaken in pursuance of the normal course of business of the company is not CSR. For instance, a company engaged in plantation cannot claim that the plantation is made as a part of its activity is CSR.
6. Only CSR activities within India will be taken into consideration. Any activity outside India will not be considered even if it complies with all other conditions.
7. If the company is unable to spend CSR funds as per provisions then it will have to report under section 134(3)(o) specifying the reasons for not spending.

CSR EXPENDITURE WHETHER CHARGE AGAINST INCOME OR APPROPRIATION

2.2.1 Whether CSR is a charge to the income or appropriation of income has not been clarified. Expenditures of various natures have been allowed as permissible under CSR. For instance, the following type of CSR expenditures is permissible:

1. Direct expenditure on charitable activities as per Schedule VII
2. Direct expenditure on charitable activities in local area
3. Direct expenditure on capacity building of employees

4. Grant to Trust or Society

5. Transfer to other corporates under pooling of expenditure

6. Donation to Govt. recognised funds where 100% tax relief is available

2.2.2 All the above types of expenditures require different types of accounting and tax treatment. For instance, 5% expenditure on capacity building of employees or local area development are judicially/legally considered as a charge against the income. Therefore, they can be directly claimed as expenditure. If that is true then it is not clear whether the 'average income' for CSR should be determined before or after charging such expenditure.

2.2.3 On the other hand, grant, donations, etc. are voluntary appropriation of income and cannot be charged as expenditure against the income. The CSR law allows all these various type of applications as CSR expenditures. Therefore, there is a lot of ambiguity with regard to the accounting and legal treatment.

2.2.4 The problem is that CSR law allows both chargeable and voluntary nature of expenditure. For instance expenditure on local area development have been held as business expenditure, therefore, a company can claim such expenditure even without the CSR laws. On the other hand, charitable activity in other areas is not chargeable expenditures and therefore, can be claimed as expenditure only under CSR laws. However, all the above issues are more relevant from a taxation angle.

CSR EXPENDITURE BEFORE OR AFTER DETERMINING NET INCOME

2.3.1 The computation of average net income shall be made under section 198. For the purpose of CSR, irrespective of the nature of expenditure, the company has to apply 2% of the Net Profit computed under 198.

2.3.2 From a finance planning point of view, a company may distinguish between the chargeable expenditure and the voluntary expenditure, because the chargeable expenditure can be deducted during computation of Net Profit under section 198.

2.3.3 For example, a company spends Rs. 4 lakh on CSR including Rs. 2 lakh on local area issues which are directly incidental to the business. Therefore, the company can claim Rs. 2 lakh on local area issues as business expenditures, which will reduce its Net Profit as well as the CSR spends. The question which needs to be clarified is that whether such overlapping expenditures (which can be claimed both as business as well as CSR expenditures) be treated as CSR expenditure and if so should they be deducted during computation of Net Profit under section 198.

LACK OF CLARITY REGARDING ADMINISTRATIVE EXPENSES

2.4.1 There is no accounting standard or mechanism to determine administrative expenses. The judicial precedence is confusing as most of the administrative expenses have been treated as programme expenses. This will result in use of discretionary norms in determining the administrative expenses, affecting the uniformity in reporting under CSR Rules. This issue has been discussed in detail in the next chapter.

TREATMENT OF SHORT FALL OR EXCESS IN CSR EXPENDITURE

2.5.1 Under Section 134(3)(o) the Board of the company is required to report the short fall in CSR expenditure, however, there is no such requirement of reporting the short fall of CSR expenditure, in the audited financial statements.

2.5.2 A short fall in expenditure is a financial issue with a legal accountability of the board. Such shortfall should be formally computed in the audited statement and the company should be required to apply such short fall in future years based on Rules as may be determined.

2.5.3 Similarly, there is lack of clarity in reporting and off setting of surplus in CSR expenditures. For example, if a company spends more than 2% of the average profit in any year towards CSR, then will it be allowed to spend less in subsequent years. Ideally, such off set should be permissible.

CAN COMPANIES AVERAGE OUT CSR EXPENDITURE IN CASE OF POOLING

2.6.1 Under Rule 4(3) a company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with the Rules. In other words, a group of companies can jointly execute CSR programmes, such companies can be holding and subsidiary companies also. The modalities of such joint execution have not been explained in the Act or the Rules.

2.6.2 However, it is not clear, in case of pooling of expenses, whether one company can spend less than the other more. In other words, can companies' average out CSR expenditure? Normally each company should be required to spend the requisite amount under CSR with or without pooling of expenses.

POLITICAL CONTRIBUTIONS CANNOT BE GIVEN

2.7.1 Under Rule 4(7) it is provided that the CSR expenditure shall not include any contribution, directly or indirectly to any political party under section 182 of the Act. It may be noted that under the Act, companies are permitted to make contributions to political parties upto 7.5% of the average Net Profit during the three immediately preceding financial years subject to the conditions specified in section 182. The text of the section 182 is as under:

Prohibitions and restrictions regarding political contributions.

182.(1) notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or

payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed —

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation —For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

GOVERNANCE

1. GENDER POLICY

GENDER POLICY

1. HISTORICAL BACKGROUND

Until the 21st century, the organizational policies were largely concentrated on the expansion of the business operations. Consideration to workplace safety gained less attention since women were not frequently involved in the business activities. Women joining the professional sectors were limited to teaching and nursing. After the post industrial revolution and social movements, women began to enter the occupational and professional careers to supplement the rising needs of the family. Gradually the need based involvement of women in the industry shifted to interest based involvement in the top notch professions which impacted the choices of hiring amongst organizations. They became more open and flexible in acquiring women employees and were looked from a macro perspective then being a homemaker. This change in the mindsets halted the myths and assumptions concerning the difference of masculinity & femininity and ensuring that both genders have equal rights, authority, power and access to different set of resources.

2. HOW TO MEASURE SUCH EQUALITY

But now the question arises, how such equality in the organization or any workplace is achieved and measured? One possible solution could be formulating a comprehensive Gender Policy covering all key issues necessary in ensuring the equal rights, participation and access to men and women in the organization. A well drafted and properly disseminated Gender Policy demonstrates the level of transparency and attention given to gender equality in the organization by the top management. The term 'Gender' has a wide scope to cover than just by limiting to the total number of women involved in the organization. A sound Gender Policy represents the organization's commitment to gender equality and incorporation of sensitivity involved with each staff member in the day to day decision making processes. In fact, Gender Policy is a comprehensive term which determines the protocol for a healthy workplace, lays guidelines on conduct with internal and external stakeholders, manner in which the private lives of the staff are taken into account and social complexities associated with a staff's background. Thus, all the areas affecting workplace is part of Gender Policy. *The 'Gender Policy' acts as a blueprint for the top management to integrate and promote gender equality within its organizational culture and programmatic operations.*

3. WHAT IS A GENDER POLICY?

Gender Policy is a set of principles and ideal practices applied across different levels of employment in the organization to build a healthy workplace culture and equality among all employees. The policy also provides a framework for action to ensure that the staff are equally treated and given full

access to different resources and opportunities. The policy also focuses on 'mainstreaming' of gender both in implementation work as well as in the decision making processes. Gender Equality Tool of International Labour Organization (ILO) explains the degree of mainstreaming of genders ***'Mainstreamingis not about adding a "woman's component" or even a "gender equality component" into an existing activity. It goes beyond increasing women's participation; it means bringing the experience, knowledge, and interests of women and men to bear on the development agenda'. The*** main objective of the policy is to maximize Fair Equitable participation and free access by all employees to key work areas in the organization.

4. RELEVANCE OF GENDER POLICY IN THE DEVELOPMENT SECTOR

The Constitution of India under Article 15 prohibits the state from discriminating on the grounds of religion, race, caste, sex and place of birth in various day-to-day activities; and Article 39 urges the state to ensure that citizens, men and women equally have the right to an adequate means of livelihood, right to shelter, food, education and work. Gender equality is a global phenomenon with international community taking initiatives in fostering this positive change in all spheres of life.

Important Laws to be kept in focus while developing a 'Gender Policy'

- *Declaration on Elimination of Violence against Women 1993, Convention on Elimination of all forms of Discrimination against Women (CEDAW), 1993*
- *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*
- *Vishaka Guidelines against Sexual Harassment at Workplace - Guidelines and norms laid down by the Hon'ble Supreme Court in Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384*)

India is also one of the many countries, which has ratified the Convention on elimination of all forms of Discrimination against Women (CEDAW) bill in 1993, making it legally bound to put its provisions in practice. By accepting the Convention, India has committed to undertake a series of measures to end discrimination against women in all forms, including:[1]

– To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;

– To establish tribunals and other public institutions to ensure the effective protection of women against discrimination;

– To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

With the rise in easy access to technology and higher participation of western countries in the developing nations, Gender Policy has started getting due push and impetus. The existing NGO sector in India is unstructured and widely spread across

[1] http://www.un.org/womenwatch/daw/cedaw/

far flung rural to cosmopolitan regions. Gender policy is a niche concept and not spoken much in the development sector as it is presumed to be followed by the organizations. In development sector, it becomes even more essential to create and implement a gender policy as the main forte is to empower vulnerable communities. Thus, developing an ethical and equal workplace is a must for implementing the welfare projects downward in the target locations. Every employee of the organization is a key player especially when the organization is working with and for the empowerment of communities.

Therefore Gender Policy should not be treated as a small section or chapter in the Human Resource Policy, in fact it should have its own space with clear set of principles, actions plan and a committee to resolve gender specific issues in the organization to which employees of all levels must adhere to.

5. SPECIFIC PURPOSES OF GENDER POLICY

- To serve as a framework for maximizing fair and equitable access to opportunities in terms of Ownership, Leadership, Representation and Governance.
- To clarify roles and responsibilities of each position and level in the organization irrespective of the gender.
- To establish Standard Operating Procedures (SOP) for handling grievances related to gender inequality.
- To form a committee equipped with adequate authority in order to take required action in case of any grievance or breach of provisions of the gender policy.
- To ensure compliance with the law of the land.

6. USERS OF GENDER POLICY

Gender Policy talks about the inherent values of an organization which covers wide range of stakeholders such as:

I. Board
II. Top Management
III. Staff
IV. External Agencies/ Donors
V. Resource Partners
VI. Any other person prescribed by the organization

The above mentioned stakeholders are expected to familiarize themselves with the conduct of the Gender Policy/Manual governing the code for a healthy and equal opportunity based workplace.

7. POTENTIAL AREAS UNDER THE POLICY

Recruitment and Retention

- Open dissemination of recruitment process, job description and work delivery expectations,
- Fair selection process based on the requirement of the position, skills, experience, and knowledge of the candidate,

– Fair and Equal monetary compensation to the selected candidate irrespective of the gender,
– Organizing skill and performance analysis of all employees on regular basis to ensure the work performed by each employee is duly valued,
– Providing Training and Development opportunities to all employees.

Promotions and Growth

– Conducting analysis of the number of promotions for both women and men annually, -Consider employees on parental leave for promotion,
– Proper communication of opportunities for promotion so as to be easily accessed by all employees throughout the organization.

Training and Development

– Implement mentoring or sponsorship programs in non-traditional areas for women particularly,
– Conduct analysis on the number of women and men accessing training and development programs,
– Ensure all employees have an annual career discussion with their senior managers that includes an annual training and development plan.

Termination / Resignation

– To implement a process for capturing exit interview data for each employee to identify the correct of reason for termination or resignation,
– To implement a process for tracking and comparing the number of women and men resigning from the organization.

Safety, and Freedom from Violence

– Ensuring the safety of female employees in the workplace, including travel to and from the workplace,
– Prohibition and prevention of all forms of violence in the workplace, including verbal, physical, and sexual harassment,
– Ensure flexible working conditions for women employees.

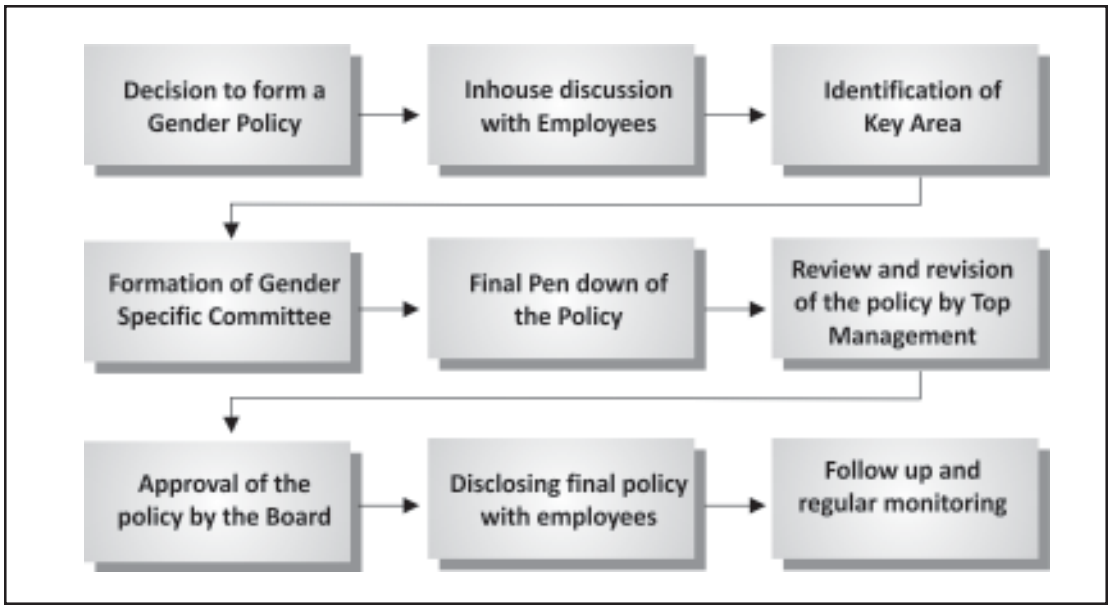
Equal participation in the Management and Governance

– Ensure fair representation of men and women in the Board, and Top Management,
– Providing due responsibility and authority to all members of the board and management to initiate and execute given task.

8. DEVELOPING A 'GENDER POLICY'

Generally, it is the *Human Resource Department* which is responsible for preparing the Gender policy taking the vision, mission and objectives of the organization into consideration. In some organizationsa separate committee is formed to look into gender specific issues. The draft of the policy is then shared with the senior management for further feedback. After thorough reviews and revisions, the policy is approved by the Board.

9. IMPLEMENTATION FRAMEWORK



Once a strategic level planning through interactive sessions by top management is held and the same is transparently disseminated to all stakeholders mainly employees, it goes to the concerned department mainly HR department to identify the key areas that would form part of the policy in consultation with staff members.

After the initial exercise to form a Gender policy, process of selecting the committee members begin. The members selected should include staff from all levels, genders and diverse experience. While forming the committee members, below mentioned areas should be considered and disclosed to other staff members:

- Process of formation and selection criteria of the committee members,
- Mandate, Powers, Responsibilities, Authorities and different functions of the Committee Members,
- Recording of the meetings and agenda discussed during the respective meetings,
- Clearly specify the names and contact details of the members,
- Implementation framework of changes brought forward by the committee in this regard at the office and field level.

Further, it is essential the committee should develop a separate framework for the field staff that generally operates in far located disadvantaged areas.

Once the basic background is ready, it goes to the final assigned team to get it structured. If required external expertise can also be sought. The Gender Policy should cover internal, institutional, external service delivery issues as well as the issues arising in the field area.

Further, the draft policy is discussed and reviewed by top management and respective committee members before being approved by the Board members. Once the policy is approved by the Board it is shared and disclosed down to the employees.

10. KEY POINTERS WHILE DEVELOPING A GENDER POLICY

- Commitment to gender equality through a Board statement or comparably prominent means,
- Display the commitment in the workplace with due emphasis and make it available to all employees in a readily accessible form,
- Establish benchmarks to measure and monitor progress towards gender equality and report results publicly,
- Establish a clear, unbiased, non-retaliatory grievance policy allowing employees to comment or complain about their treatment in the workplace,
- Engage in constructive dialogue with stakeholder groups, including employees, non-governmental organizations, business associations, donors customers, and the media on progress in implementing the organization's commitment to gender equality.

11. CONCLUSION

- Every organization has people from different walks of life and can have different approaches and opinions about various issues pertaining to Gender prospect. Some might not be comfortable to discuss these issues and others just overlook the long term repercussions of non-adherence of such policies.

Thus, it is imperative to understand the significance associated with the adverse effects of not adhering to the provisions of Gender Policy particularly the legal and reputational consequences. Looking at the upcoming global concerns over disadvantaged genders business operations cannot be performed in isolation. Also the policy should be in conformity with national, regional and international legal compliances specially if it funded by foreign sources. Stakeholders are now much more vigilant and participative in selecting its partners. Therefore, an issue which seems small might not be the way it appears. Moreover, maintaining a healthy workplace will contribute to the upward growth of the organization and assist the top management to retain its employees for a longer period. *A good Gender Policy is an indispensible tool for ensuring fair working environment which is free from all forms of discrimination. Once the key components of the policy are finalized, it should be disclosed to all the employees and stakeholders for due adherence and practice in day to day operations.*

Therefore Gender Policy should not be treated as a small section or chapter in the Human Resource Policy, in fact it should have its own space with clear set of principles, actions plan and a committee to resolve gender specific issues in the organization to which employees of all levels must adhere to.

12. SAMPLE POLICIES OF OTHER ORGANIZATIONS PARTICULARLY FOR NGO SECTOR

12.1 Action Aid

https://www.actionaid.org.uk/sites/default/files/doc_lib/119_1_gender_policy.pdf

12.2. Watershed Support Services and Activities Network (WASSAN), India

http://www.wassan.org/about_wassan/gender_policy.htm

12.3 TEAR, Australia

https://www.tear.org.au/static/files/common/policyGender.pdf

12.4 BRAC, Bangladesh

https://www.brac.net/sites/default/files/Gender%20Policy (English).pdf

12.5 AMREF Health, Africa

http://amref.org/silo/files/amref-gender-policy-and-guidelines.pdf

Annexure

SAMPLE FORMAT OF GENDER POLICY

1. **About the Organization**

2. **Rationale for Gender Policy**

3. **Goal and Objective of the Policy**

4. **National and international trends (keeping the Gender and Development agenda in consideration)**

5. **Scope of the policy**

   5.1 Brief description of the Policy

   5.2 Goals and Objectives of the Policy

   5.3 Guiding Principles/ Issues taken up in the Policy

   5.3.1 **Recruitment and Retention**

   A. Likely sub-areas along with the detail of activities covered under the Principle/Issue

   B. The team responsible for implementing this principle (for example HR Head)

   C. Likely Action plan in case of any breach of the principle

   5.3.2 **Promotion and Growth**

   A. Likely sub-areas along with the detail of activities covered under the principle/Issue

   B. The team responsible for implementing this principle

   C. Likely Action plan in case of any breach of the principle

   5.3.3 **Training and Development**

   A. Likely sub-areas along with the detail of activities covered under the principle/Issue

   B. The team responsible for implementing this principle

   C. Likely Action plan in case of any breach of the principle

   5.3.4 **Termination / Resignation**

   A. Likely sub-areas along with the detail of activities covered under the principle/Issue

   B. The team responsible for implementing this principle

   C. Likely Action plan in case of any breach of the principle

   5.3.5 **Safety, and Freedom from Violence**

   A. Likely sub-areas along with the detail of activities covered under the principle/Issue

   B. The team responsible for implementing this principle

   C. Likely Action plan in case of any breach of the principle

5.3.6 **Equal participation in the Management and Governance**

A. Likely sub-areas along with the detail of activities covered under the principle/Issue

B. The team responsible for implementing this principle

C. Likely Action plan in case of any breach of the principle

6. **Formation of Gender Committee and its detailed Functions including**

A. Process of formation, Mandate, list of committee members, meetings

B. Description of likely roles & responsibilities, rotation of members

C. Implementation Framework for any new change forwarded by the committee

7. **Detail of Action Plan in case of identified Gaps**

8. **Follow up Mechanism**

9. **Reporting of significant impact of the Policy in the day to day operations**

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