

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

INDIAN LEGAL FRAMEWORK AND CORPORATE SOCIAL RESPONSIBILITY.

AUTHORED BY - AMNA ALI & DR GARGI BHADORIA

ABSTRACT:

Corporate social responsibility is based on the stakeholder model and emphasizes the needs of all stakeholders. This article discusses the evolution of corporate social responsibility in India. This article describes the various steps taken by the "Corporate Department" before formalizing the legal framework for CSR under the Companies Act, 2013. According to the article, Indian corporate groups are expected by their supporters to fulfill their CSR obligations, while American and British companies are legally required to do so in India. Additionally, the research will examine how COVID-19 impacts corporate social responsibility (CSR) policies and programs undertaken by corporations.

INTRODUCTION:

Despite the lack of a universally accepted definition for corporate social responsibility (CSR), all current definitions acknowledge the impact companies have on society and its associated social obligations. Originally rooted in philanthropic projects such as corporate donations, philanthropy and relief efforts, CSR has expanded globally to encompass a variety of related concepts. These include the triple bottom line, corporate citizenship, philanthropy, strategic philanthropy, shared value, corporate sustainability and corporate responsibility.

The United Nations Industrial Development Organization defines corporate social responsibility as: "Corporate social responsibility is a management principle whereby companies incorporate social responsibility and environmental considerations into its business practices and interactions with stakeholders. CSR is generally considered a means by which a company achieves a harmonious combination of economic, environmental and social priorities, known as the triple bottom line, while striving to meet expectations. from both shareholders and stakeholders.

The Ministry of Corporate Affairs' Second High-Level Committee Report, 2018, "The (CSR)

law intendsto mainstream the practice of business involvement in CSR and make (businesses) socially, economically and environmentally responsible to address social and environmental concerns of the local area and other needy areas in the country¹

EVOLUTION OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA:

The company should do all its activities by obtaining all the resources of the society in various forms. That is why it is important to know what benefits society can receive from such an entity that uses its resources without jeopardizing the socio-economic and environmental sustainability of society in general. Since there is no universally valid definition of CSR, any publicly available definition does nothing but support the impact of companies on society in general and societal expectations of them.

CSR has traditionally been practiced in India in terms of philanthropy since the 1850s. Its importance has grown in India since the 1990s. The sixty-year-old Company Law of 1956 did not include corporate social responsibility; Therefore, CSR activities were purely voluntary. There are many large entities that have actively participated in CSR activities, but unfortunately their number is relatively less. To encourage more stakeholders to participate in the development process of society through CSR, the Government of India introduced the concept of Corporate Social Responsibility in the new Companies Act 2013.

Most companies do not meet the level of society's expectations. , which became the root cause of India's uneven welfare gap. . To overcome such welfare gaps, the Limited Liability Companies Act 2013 promotes greater transparency and openness in its disclosure. Schedule VII of the Act puts communities at the heart of CSR initiatives. According to the Indian Institute of Corporate Affairs, at least 6,000 Indian companies are required to implement CSR initiatives to comply with the provisions of the Companies Act, 2013, and many are undertaking these initiatives for the first time. Thus, CSR must go beyond the concepts of philanthropy and philanthropy. Hence, Corporate Social Responsibility under the said Act seems to be a promising positive step to ensure that such social welfare gap is bridged in the Indian context.

¹ Ministry of Corporate Affairs Report of the High-Level Committee on Corporate Social Responsibility 2018 (Ministry of Corporate Affairs 2019) ch. 2, Pg. 21.

LEGAL FRAMEWORK OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA:

In 2009, the Ministry of Enterprise published voluntary company governance guidelines. It provided the Indian corporate sector with a voluntary governance framework for ethical and responsible business practices. Business sectors were to adopt these guidelines voluntarily.² The purpose of this manual was to increase the value of the company and the trust of stakeholders, which contributed to the success of the company.

The government has encouraged corporate India to follow these guidelines and develop corporate social responsibility policies while safeguarding the interests of all stakeholders. Later, DPE issued various guidelines in 2010 such as "Corporate Social Responsibility Guidelines for Public Sector Enterprises" and revised in 2013; "National Voluntary Guidelines on Corporate Social, Environmental and Financial Responsibilities" in 2011.

Many environmental laws, rules and regulations carried the spirit of CSR policy. When the government felt the need to change the Limited Liability Companies Act, 1956, CSR found its way through legislation into the Limited Liability Act, 2013 and the law came into force on 30 August 2013. The government relies on the powers conferred by section 135 and sub-section (1) and sub-section (1). 2) Section 469 made the Corporate Social Responsibility Rules which are the "Companies (Corporate Social Responsibility Policy) Rules, 2014" which was later amended by the "Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021" which came into effect in 2021. 22 JULY 2021. This was done to promote the spirit of corporate social responsibility by increasing transparency, accountability and sustainability.

"Section 135 of the Companies Act, 2013" is amended of the Companies (Amendment) Act 2019 by amending sub-sec. (5) and inserting subsection (6), 7 and 8.³ Applicability of "Section 135": This section applies to any public or private company having net assets of five hundred million or more; or the turnover is one thousand million or more; or pre-tax profit of five million or more and this criterion must be met in each financial year.

This section also requires such companies to constitute a corporate social responsibility

² Ministry of Corporate Affairs, GOI, Corporate Governance Voluntary Guidelines

³ Companies (Amendment) Act, 2019 https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf

committee. The committee consists of three or more members, one of whom is independent. A private company does not need to have an independent director. An unlisted company may have two or more directors. According to Company Rule 3 (CSR Policy) 2014, holdings and subsidiaries are eligible to social responsibility if they exceed the limit according to 135 subsection 1.⁴ The regulation of social responsibility also applies to foreign companies and companies based on § 8, if they meet the required criteria. The composition of the social responsibility committee and the duties of the committee and the board: subsection 2 subsection 135 of the law obliges the government to report the composition of the social responsibility committee in its report.

There is no need to form a CSR committee if two percent of the average net profit is less than 50 million rupees and the government performs the functions of such a committee. The Social Responsibility Committee designs and recommends the corporate social responsibility policy to the board. The policy consists of the actions defined in Schedule VII⁵, which the company is prepared to take. The amount and form of expenditure are also mentioned.

The Committee regularly monitors CSR policies to update activities/initiatives. If the board approves the policy, taking into account the recommendations, the content of the policy must be publicized on the company's website and it must be verified that this action is the company's.

CORPORATE SOCIAL RESPONSIBILITY AS A DUTY

Corporate social responsibility was made a compulsory duty by the Companies Act of This regulation was passed in The Board is required to allocate a minimum of two percent of the average net profit from the three previous financial years to CSR initiatives, as specified in Schedule VII and mentioned in subsection (5) of Section Even if a company has not completed three financial years since its incorporation, it must now spend 2 percent of the average net profit from each year in the previous financial year under the 2019 amendment. The second proviso to sub-section (5) required, before amendment, the Board to give reason for not complying with provisions of sub-section (5)⁶. An amendment to the Companies (Amendment) Act, 2019 has been made to remove the second proviso from sub-section (5) and mandate that the Board must

⁴ Sub-Section (1) of Section 135, Companies Act, 2013

⁵ FAQs https://www.mca.gov.in/Ministry/pdf/FAQ_CSR.pdf

⁶ Sub-sections (3) and (4) of Section 135, Companies Act, 2013; Rule 5(2) of the Companies (CSR Policy) Rules, 2014

provide a reason for non-compliance and transfer any remaining amount to Specified Fund in Schedule VII within six months of project completion.

UNSPENT AND UNREPORTED CORPORATE SOCIAL RESPONSIBILITY ACCOUNT

The unreported surplus in the CSR account must be transferred to an account in the bank within 30 days before its next financial year if the excess is related to an ongoing project, as per Section 135. Moreover, the CSR amount should be disbursed completely on the concerned project. If the company fails to expand the amount within the prescribed period, then it should transfer the remaining amount to a Fund given under Schedule VII.⁷ Such an account opened by the company for this purpose is referred to as an Unspent Corporate Social Responsibility Account as per sub-section (6).

PROVISIONS AND PENALTY FOR NON-COMPLIANCE OF CSR POLICY:

The act of non-compliance was originally punishable under Section 134(8) when ss (7) was not introduced to Section 135. Section 135(7) as amended by “The Companies (Amendment) Act, 2020” states that if the company violates the provisions of Section 135(5) or fails to transfer the surplus amount to a Fund as provided under sub-section (6), it will be liable to pay twice the amount to be transferred to the Fund or to Unspent Corporate Social Responsibility Account or rupees one crore, whichever is less, as a penalty⁸. If any officer is in default, then he/ she will be imposed with a liability to pay 1/10th of the amount which was to be transferred to the Fund or the Account or rupees two lakh whichever is less, as a penalty.

CSR AMIDST COVID-19:

On March 11, 2020, the Director General of the World Health Organization declared a pandemic situation in the world through a media briefing. Though an indication of global emergency with respect to public health was already given by the international organization at the end of January, 2020. Since the announcement, governments around the world have put measures and systems in place to reduce the spread of the coronavirus. These trends and spending on health services

⁷ Sub-Section (6) of section 135, The Companies Act, 2013; Section 21 (b) of Companies (Amendment) Act, 2019
⁸ (n3), The Companies Act, 2013; Section 27(b) of the Companies (Amendment) Act, 2020
https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf accessed on 30th November 2021

are of great concern to the Indian government. Among other sources of funding, the central government has exposed CSR spending for health and COVID-19 projects.

The Ministry of Corporate Affairs issued General Circular No. 10/2020⁹ dated March 23, 2020. It is established that if companies and CSR institutions spend money on activities related to COVID-19, it is considered an expenditure on CSR activities. . Therefore, according to this circular, activities related to COVID-19 are listed in Schedule VII in points (i) and (xii), including activities related to health and hygiene promotion and disaster prevention, relief and management. The business sector has come forward to donate resources to the efforts being made to reduce the epidemic.

PM CARES UNDER THE SEVENTH SCHEDULE TO THE COMPANIES ACT, 2013:

Following the crisis of the COVID-19 pandemic, the Prime Minister's Citizens' Aid and Relief Fund (PM CARES Fund) was created on an emergency basis. an office memorandum was issued. Mar 28, 2020. It said that the PM CARES Fund will be included in "clause (viii) of Schedule VII to the Companies Act, 2013". It has also been clarified that donations to this fund will be treated as expenditure on CSR funds. Prior to this circular, the Company has already contributed to the Prime Minister's National Relief Fund and other funds specified in loan number (viii)¹⁰. The pandemic has slowed markets and hit the corporate sector hard. Prime Minister CARES disputed that the government said it was not a right to speak.

PUBLIC INTEREST RELATIONS CENTER VS. UNION OF INDIA:

The transfer of funds from PM CARES to the National Disaster Response Fund (NDRF) through a writ petition filed in the Supreme Court of India. The government has declared PM CARES a charitable fund and a public trust. It has also been argued that public trust funds cannot be transferred to statutory funds like the NDRF. Contributions to the NDRF come from central

⁹ General Circular No. 10/2020, No. 05/01/2019, Ministry of Corporate Affairs, GOI, https://www.mca.gov.in/Ministry/pdf/Covid_23032020.pdf accessed on 30th November 2021

¹⁰ Legal Correspondent, 'Supreme Court to pronounce judgment on PM Cares today', The Hindu, Published on August 18, 2020, <https://indiankanoon.org/doc/175813671/> accessed on 30th November 2021

government and state funds. Senior advocates Dushyant Dave and Prashant Bhushan¹¹ represented COIL. The petitioner alleges that PM-CARES is not under the scrutiny of the CAG and thus avoids public scrutiny. The argument for the government finds some logic in every illusory situation. It was submitted that the corporate sector should contribute to the COVID-19 Support Fund (PM-CARES). Because in return these companies benefit from CSR (eg market value and stakeholder engagement), not for countries' budgets.

DECISION OF THE SUPREME COURT:

The answer of the Supreme Court is negative in three questions. After hearing the arguments of both parties, the court declared that the petition has no basis. Accordingly, the application was dismissed.

CASE ANALYSIS:

Non-governmental organizations that receive income from CSR spending have been severely affected by the crisis mode and the CSR response to the pandemic. Since most funds have been diverted to activities related to COVID-19, the government has lost the need for these NGOs to carry out programs other than COVID-19 relief efforts.¹² NDRF was neglected during the pandemic as it received only Rs 81,115 in CSR expenditure.

CRITICISMS AND FUTURE PROSPECTS OF CSR IN INDIA:

Despite its benefits, CSR in India faces several challenges and criticisms. One of the main challenges is the lack of clarity and consistency in the implementation of CSR activities. Companies often struggle to identify relevant projects and measure the impact of their initiatives.

Another challenge is the issue of compliance, with some companies failing to meet the mandatory CSR spending requirements. There are also concerns about the effectiveness of CSR activities, with critics arguing that some initiatives are merely superficial and do not address underlying issues.

Despite the challenges, the future of CSR in India looks promising. Companies are increasingly

¹¹ Legal Correspondent, 'Supreme Court to pronounce judgment on PM Cares today', The Hindu, Published on August 18, 2020, <https://indiankanoon.org/doc/175813671/> accessed on 30th November 2021

¹² Writ Petition (s) (Civil), No. 546/2020, <https://indiankanoon.org/doc/175813671/> accessed on 30th November 2021

recognizing the importance of CSR in achieving sustainable development goals and are integrating CSR into their core business strategies. The government is also taking steps to promote CSR, such as through the introduction of the National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business in 2011.

Going forward, it will be important for companies to focus on impactful and sustainable CSR initiatives that address the needs of stakeholders and contribute to the overall development of society. Collaboration between government, businesses, and civil society will also be crucial in realizing the full potential of CSR in India.

CONCLUSION:

CSR has emerged as a key component of corporate governance in India, driven by legal mandates and societal expectations. The Companies Act, 2013, has played a crucial role in institutionalizing CSR in India, making it mandatory for certain companies to allocate resources for social development. While CSR in India faces challenges and criticisms, its impact on communities and businesses cannot be ignored. With the right approach and collaboration, CSR has the potential to drive sustainable development and create a positive impact on society.

