



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.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, 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.

CRITICAL ANALYSIS OF THE CSR FRAMEWORK IN INDIA- CONTEXT OF THE PANDEMIC

Authored By - Midhula Gattu

20jgls-Mgattu@Jgu.Edu.In

8179000001

Jindal Global Law School

INTRODUCTION

Corporate Social Responsibility is an initiative whereby companies incorporate social, environmental, and ethical concerns in their business strategies and operations¹. Though the term CSR has emerged in the recent decades, India has recognised such social obligations of firms towards employees and society a long time ago. Sundar P. in his paper about the Indian business philanthropy identified four phases of business philanthropy in India. First phase of CSR was in the early stages of industrialization (1850–1914). Here, wealthy business families established trusts and institutions including schools, colleges, and hospitals. Second phase was the Indian freedom struggle (1914-60). Businesses supported freedom movements and nationalist movements as a sense of self interest in response to the hostility faced by them through the British. An increase in mistrust towards corporations in the socialist regime of India coupled with the drop in corporate philanthropy marked the third phase. Post liberalisation marks the fourth and the final phase. Liberalisation, privatisation, and globalisation (LPG), and the subsequent pro-business environment helped companies to contribute more to the society hence increased initiative in social work by corporations². Moreover, the scope of CSR has been increasing in emerging economies both in scale and in scope³. CSR in India during pandemic is the examples of the very same. CSR during pandemic can be seen as a fifth stage which allowed the narrow understanding of the legislation to expand with innovative CSR contributions which made a considerable impact

¹ Dr. Reena Mehta, Jyotika Jain, *Social Entrepreneurship: A Form of Social Responsibility in India*, DHRIITI.COM, <https://dhriiti.com/wp-content/uploads/2017/11/SE-A-form-of-Social-Responsibility-in-India.pdf>

²PUSHPA SUNDAR, BEYOND BUSINESS: FROM MERCHANT CHARITY TO CORPORATE CITIZENSHIP: INDIAN BUSINESS PHILANTHROPY THROUGH THE AGES 143 (Tata McGrawHill 2000).

³ COSMINA LELIA VOINEA AND COSMIN FRATOSTITTEANU, CORPORATE SOCIAL RESPONSIBILITY IN EMERGING ECONOMIES: REALITY AND ILLUSION BOOK (Open Universiteit Nederland, July 2018)

on the effect the pandemic had on India. However, it is not untrue that we expect too much of companies in such dire times when most of companies do not a structured policy to begin with. This research paper aims to critically analyse the well commended CSR structure in India in the context of legal framework and the further notifications which broadened the scope of CSR owing the exceptional circumstances.

LEGAL FRAMEWORK OF CSR IN INDIA

India is the first country in the world to have mandated CSR. It has done so through Section 135 of the Companies Act, 2013 (the Act) along with Schedule VII in the Act and Companies (Corporate Social Responsibility Rules), 2014. With the mandate of CSR, it has undisputedly been found that many companies approach CSR as box to tick off to avoid penalties or loss of reputation among their stakeholders. Section 135 states that companies having a net worth of at least 500 crore, turnover of 1000 crores, or net profit of 5 crores or more during the preceding financial year to spend a minimum of 2 percent of net profits during the immediately three preceding financial years⁴. The CSR Rules, 2014 provides modalities for implementation of CSR activities. It has prescribed to constitute a CSR committee which is responsible to make CSR policies, recommend activities, and monitor the same⁵. The committee must consist of at least 2 directors for private companies and 3 for public companies⁶. When a company fails to comply with such mandate of 2%, it needs to submit a report stating the reasons for the same. Failure of the same leads to a penalty of 2,500,000 rupees⁷. Schedule VII provides valid CSR activities under twelve parts.

CSR DURING PANDEMIC

The impact of COVID-19 pandemic on the pandemic has been unprecedented. The impact of the pandemic itself and the necessary lockdown that followed it has immensely affected Indian economy. Government has announced 20 lakh crores (10% of the Indian GDP) worth of COVID relief package. However, like how companies had come to the aid by supporting freedom movements and nationalist movements during the independence struggle (1914-60)⁸, many companies have played a crucial role in aiding the society and humanity through CSR during the

⁴ Companies Act, 2013, § 135, No. 18, Acts of Parliament, 1949 (India).

⁵ The Companies (Corporate Social Responsibility Policy) Rules § 5 (iii), 6 (ii) (2014).

⁶ Companies Act, 2013, § 134(8), No. 18, Acts of Parliament, 1949 (India).

⁷ Companies Act, 2013, § 134(8), No. 18, Acts of Parliament, 1949 (India).

⁸ PUSHPA SUNDAR, BEYOND BUSINESS: FROM MERCHANT CHARITY TO CORPORATE CITIZENSHIP: INDIAN BUSINESS PHILANTHROPY THROUGH THE AGES 143 (Tata McGrawHill 2000)

pandemic. Many corporations have initiated innovative measures and charitable measures. Some of these innovative charitable measures do not necessarily fit into the narrow legislative definitions of CSR. Owing the same, the government has declared, through general circular, that the funds spent by the company relating to COVID can be classified as CSR activities⁹. It was added that in the wake of pandemic, the list of items under Schedule VII needs to be liberally interpreted. Moreover, a second circular by the government has answered through an FAQ what spendings falls under CSR spendings¹⁰. For ease of understanding, the table below shows what is considered to be a CSR contribution according to second circular.

Contribution Qualifying CSR	
Contribution to PM CARES Fund	✓
Contribution to CM's Relief Fund	✗
State Relief Funds	✗
State Disaster Management Authority to fight COVID-19	✓
CSR funds spent on Covid-19 programs	✓
Payment of Salary during the lockdown	✗
Payment of Wages to labors during the lockdown	✗
Ex-gratia paid to casual workers to fight Covid-19	✓

Source: Ministry of Corporate Affairs

The government has also declared COVID to be a notified disaster and relied on State Disaster Response Funds to accumulate aid. Moreover, PM CARES (Prime Minister's Citizen Assistance and Relief in Emergency Situation Fund) was set up and Schedule VII was amended to include the same to CSR activities. The same was done to encourage corporations to contribute to discharge from the CSR statutory obligations.

CRITICAL ANALYSIS

COVID has undisputedly led to an increase in the societal importance of CSR. During the rise of covid cases, many companies have increased their CSR involvement beyond the set budget. For example, Tata Motors has been one of the companies that has provided most impact benefitting 1.5 lakh people including poorer sections of the society such as migrants, daily wage workers and so on. It has provided material assistance such as funds, food, masks, PPE kits and sanitizers as well as spreading awareness. SAIL (Steel Authority of India) has provided 33,300 tons of liquid

⁹ General Circular No. 10/2020: Clarification on spending of CSR funds for COVID-19.

¹⁰ General Circular No. 15 /2020: COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR).

medical oxygen for the treatment. On the other hand, Nippon Steal India has provided around 200 tons of Liquid medical oxygen¹¹. TCS through an initiative called TCS ion Digital classroom has aided students' online learning which had real impact in the time where everyone has been forced to resort to technology to carry on daily activities. This shows that the scope of CSR has increased through COVID.

Though CSR has been legalised recently, most of the CSR policies of companies are haphazard and not underpinned with structured policies. Moreover, scholars and society sometimes expect too much of it¹². As mentioned before, through the legal framework of CSR, CSR has been mandated CSR spending to companies having a net worth of at least 500 crore, turnover of 1000 crores, or net profit of 5 crores or more during the preceding financial year to spend a minimum of 2 percent of net profits during the immediately three preceding financial years. Moreover, according to section 135, the compulsion is ceased only if a company has ceased to meet the criteria for 3 consecutive financial years. The criteria of three consecutive years seems excessive, especially in the context of COVID where many companies where many companies profits have leaped down within a span of a few months. According to official data presented in Parliament, CSR spending for the financial year (further referred to as FY) 2020-21 dropped gravely to Rs. 8,828.11 crore in comparison with CSR spending in FY 2018-19 (which was Rs. 20,150.27 crore) and FY 2019-20 in Rs. 24,688.66 crore. Moreover, only 1,619 companies have invested in CSR in the FY 2020-21 compared to 22,531 companies in FY 2019-20. Pandemic has caused unprecedented effect on the Indian economy. Many small-scale industries have ended up in shutting up or merging to merely exist. Companies have also struggled to keep the employees safe, recover their productive systems and deal with operational and financial challenges all while in the economy of low consumer demand, supply variations, shut down restrictions. Considering all these factors in, CSR should not be mandated to at least certain companies who found themselves difficult to survive. A countering argument is that if corporations are not held responsible, it could lead to disasters like Bhopal Gas Tragedy or the Visakhapatnam Gas Leak. Moreover, legislation mandating has actually encouraged companies of various scales to perform massive activism through CSR during the pandemic including start-ups¹³. Second countering

¹¹ Niteesh Kumar Upadhyay and Mahak Rathee, *AN ANALYSIS OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA WITH SPECIAL REFERENCE TO COVID-19 SITUATION*, RESEARCHGATE (June 2021), https://www.researchgate.net/publication/352355807_AN_ANALYSIS_OF_CORPORATE_SOCIAL_RESPONSIBILITY_IN_INDIA_WITH_SPECIAL_REFERENCE_TO_COVID-19_SITUATION

¹² COSMINA LELIA VOINEA AND COSMIN FRATOSTITEANU, *CORPORATE SOCIAL RESPONSIBILITY IN EMERGING ECONOMIES: REALITY AND ILLUSION BOOK* ([Open Universiteit Nederland](#), July 2018)

¹³ SUJAY GHOSH AND NAVEEN DAS, *COVID-19, THE GLOBAL SOUTH AND THE PANDEMIC'S DEVELOPMENT IMPACT 77-92* (Bristol University Press, 2022)

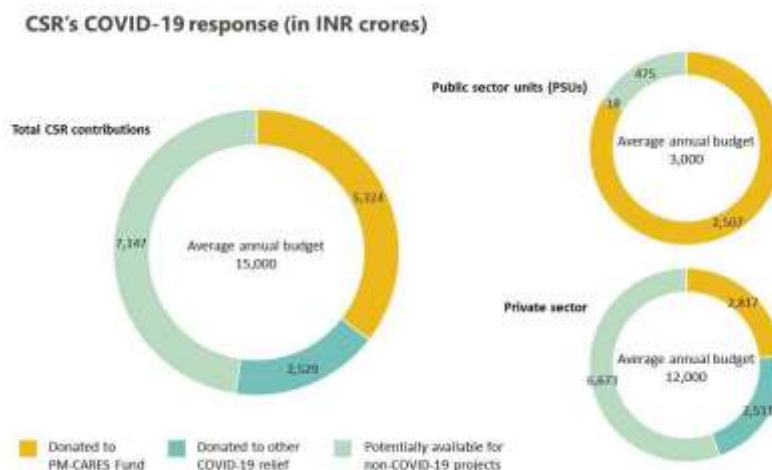
argument was that the mandating legislation in pandemic has shown positive impact of CSR where companies were able to supply essential commodities and has increased the narrow view of CSR pre-pandemic¹⁴. However, it is illogical to say that mandating CSR at the time of global pandemic which has not been in control of the companies and has taken a huge toll on every company and economy is important to prevent the disasters caused by the companies itself. Maintaining a strict liability towards companies is important in cases such as Bhopal Gas Tragedy. Such cases indeed help in keeping companies accountable to their responsibility to the society and their actions that harm the society, but that cannot be used as a justification to absolve at least some of the companies (the most affected ones) from an overbearing 2% of CSR spendings at least during such trying times. Secondly, such mandatory during trying times will only encourage the companies to use the legal loopholes to misuse CSR funds or get away from such imposition using ghost beneficiaries, money laundering to avoid penalties or loss of reputation. Moreover, the increase in narrow view was not due to the mandatory provision but due to the dire need and the initiative nature of companies.

Based on the data collected among the top 50 companies of India, it has been concluded that after inclusion of relief funds into CSR through notification, the 50 companies have contributed about a total of INR. 6,916 Crores towards relief which includes INR.3,570 towards the PM Cares Fund and INR 3,346 crores towards other relief funds such as State Disaster Relief Funds. Apart from the material assistance, TATA Motors has also provided 500 crores rupees to PM Care Fund¹⁵. Another survey has suggested that out of 3,000 crores of collective public sector units CSR budget, 2,507 crores has been donated to PM-Cares. On the other hand, private companies have donated an average of 2,817 crores out of 12,000 crore of CSR budget for the FY 20-21¹⁶.

¹⁴ Arnav Ashtikar and Dr. Sukhvinder Singh Dari, *Corporate Social Responsibility (CSR) In India: Origin, Evolution and Relevance in the Post-Pandemic Era*, BILD LAW JOURNAL, 7(4s), 403–409 (2023).
<https://bildbd.com/index.php/blj/article/view/582/455>.

¹⁵ Niteesh Kumar Upadhyay and Mahak Rathee, *AN ANALYSIS OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA WITH SPECIAL REFERENCE TO COVID-19 SITUATION*, RESEARCHGATE (June 2021),
https://www.researchgate.net/publication/352355807_AN_ANALYSIS_OF_CORPORATE_SOCIAL_RESPONSIBILITY_IN_INDIA_WITH_SPECIAL_REFERENCE_TO_COVID-19_SITUATION

¹⁶ Ayesha Marfatia, *In charts: How the PM-Cares fund is hurting India's NGOs*, SCROLL.IN (Jul. 08, 2020),
<https://scroll.in/article/966746/in-charts-how-pm-cares-fund-is-hurting-non-profits-in-india>.



Sourced from "In charts: How the PM-Cares fund is hurting India's NGOs"

The major issue with such major chunk of CSR contribution to the government funds is the lack of transparency and accountability. Recently, a law student has filed an RTI application for the government to provide PM Care Fund's deeds and orders regarding its creation and operation. The Prime Minister's Office replied that the fund is not a Public Authority under the ambit of section 2 (h) of the RTI Act, 2005. Such an answer from PMO is unagreeable as the name, control, usage, and the government domain name all suggest that the government exercises substantive control over the trust to make it a public authority under Section 2 (h)¹⁷. Moreover, there is also a lack of clarity and control over where the money is being donated to and for what exactly it is used for. Such heavy investment in the government funds has taken away from the large chunk of CSR funds that would have gone to non-Governmental organization which would make groundwork. Most of the CSR contributions to the governmental funds have been used to tick-the box approach to escape the impositions who do not want to expend their energy on long term sustainable development¹⁸.

Even considering the notifications and amendments made in the context of the pandemic to further encourage the CSR contributions by the companies, the façade of broadening the ambit of CSR activities is not completely true. The second circular which answered FAQs stated that the wages given to employees and workers even during the lockdown when they are not working could not

¹⁷ PM CARES not a public authority under RTI Act: PMO rejects application seeking fund details; will appeal, says law student, FIRSTPOST, (May 31, 2020 14:23:01 IST), <https://www.firstpost.com/india/pm-cares-not-a-public-authority-under-rti-act-pmo-rejects-application-seeking-fund-details-will-appeal-says-law-student-8430551.html>

¹⁸ Rudresh Mandal and Ashwin Murthy, CSR in the post pandemic era: the dual promise of ESG investment and investor stewardship, SSRN [April 20, 20223, 8.04AM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3799994.

be considered to be CSR as it is the moral obligation of a company to provide them the same¹⁹. Though unanswered, even the activities that contribute towards aiding the pandemic situation but are not technically spending of funds are not being treated as CSR. For example, Mahindra Group has made its resorts available as COVID facilities. The same was not considered to be CSR under schedule VII. The voluntary philanthropic effort of incurring cost to run the resorts for facilities are not considered to be CSR unlike spending revenue under schedule VII. This shows how only spending revenue is the parameter and not the moral and social motivations which only narrows down the ambit of CSR²⁰.

CONCLUSION

Though CSR during covid has been commended as it was considered to be increasing the ambit of CSR activities and increase voluntary CSR expenditure of various Indian companies, the picture is not all rosy. CSR activities towards pandemic has completely diverted from the long-term gender, economic, and environmental problems plaguing India. The mandatory imposition during such dire time on the companies is extremely harsh on the companies. Moreover, non-transparency of PM funds which constitutes a major chunk of CSR raises concern. This raises a question- what is the way forward? To answer the still narrow view on what constitutes CSR expenditure, a reasonable way forward is to determine the same case to case basis. There is a dire need to set up a regulatory authority specifically made to with CSR activities and the same would deal with determining if an activity done by a company is CSR or not. Moreover, companies should be encouraged to not only spend on CSR activities just to tick the box, protect reputation or avoid penalty but to encourage companies to spend on the resources its depleting. Companies should be made obliged to disclose the CSR spending, for it is the funds contributed to the society or community unlike a recent judgement which has held that the companies are not required to disclose the CSR amounts spent upon an RTI application²¹. Such complete transparency, not only on the government, but also on the company will ensure accountability on a deeper level.

¹⁹ General Circular No. 15 /2020: COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)

²⁰ Akshaya Kamalnath, *A Post-Pandemic Analysis of CSR in India*, INDIA CORPLAW (April 17, 2021), <https://indiacorplaw.in/2021/04/a-post-pandemic-analysis-of-csr-in-india.html>.

²¹ Shiv Prakash Rai v. Cpio: Satluj Jal Vidyut Nigam Limited, Buxar Thermal Power Project, Hrd, Cential Information Commission, Jan 25, 2019.