

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://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 II 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

# **EDITORIAL TEAM**

## **EDITORS**

### **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.

# **“CSR: CORPORATE CITIZENSHIP OR CLEVER CAMOUFLAGE? REVEALING THE MOTIVES BEHIND CSR”**

AUTHORED BY: ADITYA KUMAR

Designation: Law Student

Institution: Law Centre- I, Faculty of Law, University of Delhi

CO-AUTHOR: SEJAL GUPTA

Designation: Law Student

Institution: Asian Law College, Noida

**Keywords** - Corporate Social Responsibility, CSR Motives, PM CARES Fund, Companies Act 2013, Corporate Governance, Social Impact

## **Abstract –**

Over time, Corporate Social Responsibility (CSR) has moved from a voluntary principle to statutory implication, demonstrating the increasing realization of business importance in nurturing societal welfare. The landmark move was the introduction of CSR provisions under the Companies Act 2013, effective from April 1, 2014. Section 135 of the Companies Act, 2013 spells out the provisions related to CSR activities calling for mandatory spending by a certain class of companies towards social and environment-oriented programs. This statute was a significant milestone in the history of corporate governance as CSR became mandatory rather than voluntary to only those companies. This legislative change served a variety of purposes. At its core, this regulation intended to bring more congruence between corporate actions and national development goals or societal needs purportedly reflecting the sentiment articulated by those affected downstream as inputs during that consultation. The CSR Law sought to make sure the profits that these companies were making at a certain size or profit threshold went back in some part towards social, and environmental causes, so it mandated them. We believe this practice demonstrates a wider appreciation of the role that businesses can and should play in supporting social equity, environmental sustainability, as well as community development. This study will clarify how payments to central government funding like PM CARES, could contradict the CSR concept, which stresses using the creativity of the private sector to provide public goods and services. To bolster this point, it will look at pertinent legal rules and clauses.

## **Introduction**

CSR provisions were aimed at promoting the culture of responsible and ethical business practices amongst corporate. The Legislature determined that corporations wield enormous power and resources which, if used properly, could tackle many of the social problems facing society in a more efficient manner than public programs. Through making CSR legally mandatory, the law hopes to create an enabling framework for industries and corporates in India so as they adopt sustainable and socially responsible business practices which are seen as key enablers of the economy with success not defined only by financial performance but also societal positive impacts.

While the Companies Act of 2013 sought to interweave social accountability into corporations' core functions by mandating benevolent gestures, diverting sizable portions of mandatory CSR spending to state-run initiatives has provoked questions regarding its consistency with CSR's original spirit. Specifically, the legislation intended for businesses to meaningfully contribute to societal and environmental well-being by integrating a sense of responsibility into their very operations. However, funnelling much of the required CSR expenditures through centralized government programs has sparked debates around whether this truly synchronizes with the philosophy of balancing profit motives with moral duties and social considerations in decision-making. Though aiming to concurrently address economic aims and ethical imperatives through progressive policy, some argue persuasively that recent tendencies diminish CSR's potential to directly remedy social and environmental issues through grassroots efforts, instead of broad government directives. To scrutinize further, let's understand the legal aspects of CSR in India.

## **Legal Framework of CSR in India**

### **Section 135 of the Companies Act, 2013**

Section 135 of the Companies Act, 2013 is dedicated to CSR. In accordance with this section, Indian companies, which meet certain net worth, turnover or net profit requirements, are expected to spend, as follows, 2% of their average net profit over the section's specified period. There is also a Schedule 7 of the Act stating the supports that each such company may provide, such as eradicating hunger, promoting education, ensuring environmental sustenance and so forth.

### **Rule 2(1)(d) of the Companies (Corporate Social Responsibility Policy) Rules, 2014**

Further defining CSR and providing direction for executing CSR activities, the Companies (CSR Policy) Rules, 2014 Rule 2(1)(d) defines CSR as well as expressly excludes donations given to

any political association u/s 182 of the Act from scope of CSR activity.

### **Amendments and Clarifications**

The Ministry of Corporate Affairs has issued quite a few amendments and clarifications over the years to fine-tune the scope and implementation of CSR activities. One such amendment, for example, which can be come in handy for organisation is an amendment in 2020 that allowsthe contribution to certain central government funds such as PMNRF, subject to the conditionthat such funds are used for the social benefit of the society.

### **Philosophy of CSR**

The basic concept of CSR is that corporations must become more proactive with regard to benefiting society and promoting responsible business practices. This is premised on the fact that corporations are in a unique place with regards to the accumulation of resources, expertiseand capacity for driving change, thus can take on and contribute to social, environmental and economic challenges. It was designed to be an elective, pro-active approach that allows companies and organizations to exceed the mandatory requirements for complying with the law.

### **Key Elements of CSR Philosophy**

The foundation of CSR is the idea that companies have an obligation to make use of their powerand resources to help to improve society. This idea stresses:

**Innovation & Private Sector Involvement:** Using private sector resources along with inventiveness to solve social problems while providing public goods and services.

**Voluntarism:** Usually voluntary, CSR projects inspire businesses to beyond legal complianceas well as help to improve society.

**Stakeholder Engagement:** Good CSR calls for interacting with stakeholders—including workers, consumers, communities and investors to learn their needs and objectives.

**Sustainable Development:** CSR aims to balance economic growth with environmental sustainability and social equity.

**Innovation and Efficiency:** The private sector is well-known for its creativity and efficiency, which one may use to create and apply sensible answers for public goods and services.

## **Contradiction Between CSR Philosophy and Contributions to Central Government Funds:**

Central government funds designated like the PM CARES Fund are normally established to help relief effort during emergencies such as earthquakes, pandemics, and other dramatic events. While central government funds are widely recognized by governments and contributions to them are often encouraged in this way, the ongoing debate is related to the specific relation to the true spirit of CSR. While it may appear that contribution to a central government fund is an easy way to comply with CSR commitments by the company, such an approach is contrary to the spirit of CSR for at least several reasons.

The Corporate Social Responsibility (CSR) contributions of the corporates to the PM CARES Fund has led controversy, this recently erupted into debate. To the extent that instead of utilising these CSR funds itself, PM CARES operates on behalf of GOI receiving those moneys it would involve in transferring said amount to them and thereby subvert s. 135 intentions. The Act highlights various CSR Activities which shall be considered as contributions to the welfare of society and environment such as activities mentioned under Schedule VII that includes Promotion of education, Eradication hunger & poverty, Gender equality and empowering women along with measures for making physical difference by rural sport etc.

Contributing to central government funds does not leverage the private sector's innovation or efficiency. Central government schemes often involve large bureaucratic processes that may lack the nimbleness and innovation characteristic of private enterprises. Direct involvement of companies in CSR activities allows them to apply their expertise and innovative solutions to address specific societal needs effectively.

CSR is only as effective as the manner in which it is situated within the needs and priorities of the local community. This applies since when companies make contributions to central government funds, they become distanced from the nation and the chosen community hence the stakeholders that are directly involved in these matters of corporate duty are distanced from one another. CSR activities further direct company accountability and are transparent as a result of that. When a business contributes their funds to central government funds, the definition of who uses the fund is contention, and the cause to which it is put is not always entirely clear.

The main purpose of CSR is to involve the private sector in solving social and environmental problems using innovative approaches. Direct contributions to the government funds may not be

accompanied with the same level of creativity or problem-specific targeting as it is feasible in the case of independent CSR. It presupposes the direct contact with local populations, which lets businesses understand and meet their needs specifically. In their turn, contributions to government funds may not provide companies with such opportunities.

The essence of CSR lies in companies taking voluntary and proactive steps to contribute to societal welfare. Mandatory or encouraged contributions to government funds may be seen as a form of taxation, contradicting the voluntary nature of CSR.

### **Analysis of whether contributions to PM CARES fulfil the CSR objectives**

The primary objective of Section 135 of the Companies Act, 2013, is to ensure that corporates contribute to the social and economic development of the communities in which they operate. This section mandates that eligible companies allocate a minimum of 2% of their average net profits over the previous three years towards CSR activities. The intended focus is on projects that have a direct and tangible impact on society, as outlined in Schedule VII as those activities are designed to address specific societal needs and foster a culture of corporate philanthropy and responsibility.

The PM CARES Fund was established to address emergency or disasters like the COVID-19 pandemic. It openly declares objectives relating to assistance for victims of natural and health-related disasters as well, boosting public healthcare infrastructure, improving security research. Company-wise expenditure on contributions to the PM CARES Fund would qualify as CSR spend under Schedule VII of Companies Act, 2013 which exempts fund for benefiting Public Welfare Activities.

The lack of openness of PM CARES in this study is one of the key complaints against it. PM CARES is not covered by RTI Act unlike other govt. funds, which raises questions about responsibility of acquired and used money. This lack of openness is very different from planned CSR structure, which stresses public reporting and responsibility. Given PM CARES is audited by independent auditors instead of CAG, questions have been raised about its auditing policies. This has caused doubt on fund's audits' impartiality as well as comprehensiveness.

Direct donations to PM CARES might limit the money accessible for other community-based CSR projects. Many times including direct interaction with local communities, traditional CSR initiatives target particular needs like education as well as environmental sustainability. Usually, these initiatives have a more obvious and quantifiable influence on nearby areas. Directing CSR money

to CG fund runs danger of centralizing efforts instead of attending to local needs. Centralizing may not always match particular socioeconomic needs of various areas, therefore reducing impact of CSR initiatives.

While contributions to the PM CARES Fund may technically be compliant with Section 135 read with Schedule VII of the Companies Act, 2013, they do substantially raise questions about what CSR is all about. CSR as a Legal idea - what is the legislative intent, that life behind CSR to be involved in more direct and impactful engagement with societal causes through wide initiatives.

This centralization of CSR contributions in a government fund with transparency issues has the potential to defeat these objectives, resulting in an overall reduced effectiveness and accountability of corporate social responsibility mechanisms. It can also be inferred that corporates would rather contribute to PM CARES as alms with a view to gain the good graces of government, instead pushing CSR obligations. Further through circular EF. No. CSR- 05/1/2020-CSR-MCA, the Centre had instructed all Steel PSUs to meet their annual CSR responsibilities by making donations to the PM CARES fund. All Steel PSUs are required to "deposit unspent CSR funds of the current fiscal and the CSR funds of the next fiscal into the PM CARES Fund" as of right now, although Steel Minister Dharmendra Pradhan stated that the additional donations would be offset later. Later, the Ministry of Steel issued a statement announcing that eight steel PSUs had contributed a total of Rs 267.55 crore to the PM CARES fund. Again, a notice regarding F.No.A-50050/42/2020 in order to support the government's efforts to combat the coronavirus epidemic, the Department of Revenue released circular on April 17th, urging all officers and employees to "contribute their one day's salary every month until March 2021 to the PM CARES Fund." Despite the circular's assertion that the gifts are voluntary, officials do not want to be linked to non-donors and face scrutiny from their departments. Thus, it comes as no surprise that numerous businesses have promised to donate hundreds of crores to the PM CARES Fund. What remains to be seen is how the CSOs will fare in the coming days if these large corporations have already given the government their commitments for this year's CSR?

### **Legal Controversies Surrounding the PM CARES Fund & Impact on CSR Fund**

From its founding, PM CARES Fund has been focus of several arguments and legal investigation. Originally set up in March 2020 to handle COVID-19 pandemic and related emergencies, fund has drawn large donations—mostly from corporate companies and PSUs.

But its designation under CSR and immunity from certain statutory audits have begged various moral and legal issues. This paper explores these issues with an eye on Section 135 of the Companies Act 2013 and associated rules.

### **Exemption from CAG and RTI Oversight**

The govt. has exempted PM CARES Fund from CAG and RTI Act. The government rightly claimed that it made PM CARES Fund out of suited contributions rather than direct budgetary allocations. This explanation is, however, flawed considering that many PSUs, which are government-owned enterprises, have made substantial contributions to the fund. Audit Report for Financial Year 2021 indicates that almost 38 PSUs made a donation of Rs 2,105 crore to PM CARES Fund, in addition to Rs 150 crore made by PSU employees. This amount clearly constitutes a large indirect publicly financed component; thus, transparency and accountability concern from the way the fund is being run. Further in the public interest litigation filed by Samyak Gangwal seeking for the (PM-CARES Fund) to be declared as 'state' under Article 12 of the constitution since it is given that other ministers in Prime Minister Narendra Modi's cabinet serve as trustees and he serves as the fund's ex-officio chairman. However, the government contends that because the fund was established as a charitable trust and the Prime Minister and other ministers have "no control over it," it does not represent the "state." The government additionally contended that, as a charitable trust, it is not obligated to disclose "third-party information" about the voluntarily made contributions to the fund by individuals. Overall these arguments of government raises a justifiable doubt on transparency and accountability of the fund where CSR funds are being channelized by the corporates.

### **Tax Exemptions and CSR Classification**

The PM CARES Fund is entitled to many special exemptions - chief among them a 100% tax exemption in terms of donations under Section 80G of the IT Act, which applies on charitable contributions. In fact, donations to PM CARES qualify as a permissible CSR expense under Schedule VII and Section 135 of the Companies Act 2013. Classification of corporate entities as this will facilitate fulfilment of their CSR mandates through contribution to the fund.

### **Impact Assessment and Legislative Intent**

According to Rule 8(3) of the Companies (CSR Policy) Rules, 2014 impact assessments are compulsory for a company's CSR activities. This rule seeks to ensure that contributions for CSR have some real and measurable impact on the intended beneficiaries. Yet for contributions to a non-

transparent, obligating platform such as PM CARES with no well documented public reporting framework in place it is highly questionable how one assesses the impact.

CSR legislation was formulated with the understanding that corporations have a responsibility and obligation to society beyond profit making which includes the transformation of profits made from natural resources into social capital. It is a bad idea to allow PM CARES contribution as CSR expenditure without the necessary transparency and impact assessment, which runs counter to legislative intent of promoting social responsibility.

### **Legal and Ethical Implications**

**Transparency and Accountability:** The fact that no CAG and RTI oversight exists for PM CARES Fund earmarks the absence of an oversight mechanism. Considering that the fund is being raised with substantial public contributions and assuming as “private” the collections is a tenuous argument, if not outright a specious one, there is a strong prima facie case to assume that the fund should be subject to audits as rigorous as others and information should be disclosed in both cases.

**CSR Compliance:** Categorising PM CARES contributions as valid CSR expenditure leave open-ended questions about whether it complies in the spirit of the CSR law. Companies are bound to their CSR activities to be impactful and transparent. The existing processes around the PM CARES funds, however, do not outline the required conditions to ascertain the impact of their contributions.

**Legislative Intent:** The legislative aim of CSR rules is to encourage significant and responsible donations to social welfare. Allowing donations to PM CARES without enough effect analysis dilutes this goal and can let businesses fulfil their CSR responsibilities without real social benefit.

### **Practical Implications and Recommendations**

To ensure that CSR activities align with their core philosophy, companies should adopt the following practices:

1. **Leverage Innovation and Expertise:** Companies should utilize their expertise and creativity to develop and implement reasonable solutions for issues affecting society. This might include creating new technologies, honing already-existing processes, or creating innovative corporate models tackling social and environmental issues.
2. **Engage with Local Communities:** Businesses should interact with nearby areas to learn their priorities and requirements. This will enable the creation of CSR projects directly

and significantly impacting the society.

3. **Collaborate with Stakeholders:** To create and carry out CSR projects, businesses should work with many stakeholders including staff, consumers, investors, and non-governmental organizations. This cooperative strategy may assist to pool resources and knowledge to accomplish shared objectives.
4. **Ensure Transparency and Accountability:** Regular monitoring and sharing of progress by businesses should ensure accountability and transparency in their CSR activities. This might include setting precise goals, keeping an eye on performance, and notifying relevant parties of results.
5. **Adopt a Strategic Approach:** By including CSR into their main business plan, companies should take a strategic approach toward it. Setting long-term objectives, matching CSR activities with vision and values of the organization, and evaluating how CSR projects affect corporate success and social well-being might all help to accomplish this.

Considering these suggestions helps businesses negotiate complexity of CSR contributions so that their activities complement the basic CSR concept and efficiently handle social issues.

### **Conclusion**

The aspect of whether contributions to central government funds is a form of CSR, is dependent upon the benefit that can be derived from leveraging the innovation of a private sector. Such contributions are beneficial when the centralized relief programme has inferior or less efficient infrastructure and when it is able to provide more immediate support to the victims. In other cases such contributions may not fall under the purview of CSR since it does not align with the main theme of leveraging private sector innovations and turning the CSR relief programme into a more efficient and effective movement. However, the effectiveness of such contribution is context dependent. For instance, the contributions to the PM CARES are legally compliant and can be deemed as a form of CSR. However, such contribution may fall short of the true intent of the CSR legislation which is to ensure the corporates play a proactive and transparent role in the development of the society.

### **List of References**

1. Government of India. (2020). Clarification on contribution to PM CARES Fund as eligible CSR activity under item no. (viii) of the Schedule VII of Companies Act, 2013.

[https://www.mca.gov.in/Ministry/pdf/Circular\\_29032020.pdf](https://www.mca.gov.in/Ministry/pdf/Circular_29032020.pdf)

2. Chakravarty, P., & Bose, S. (2020). The Curious Case of Pm Cares Fund: Corporate Social Responsibility and the Suppression of Civil Society in India. *International Journal of Social Science and Economic Research*.
3. Nicholson, R. D. (2022). 'Does the Prime Minister Care?': Spectacular solidarity, infelicitous performatives and the doubly fictitious commodification of care in India during the COVID-19 pandemic. *Performance Research*, 27(6-7), 128-135. <https://doi.org/10.1080/13528165.2022.2198310>
4. Government of India. (n.d.). THE COMPANIES ACT, 2013. <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>

