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An Analysis of the Role of Corporates in the time of Pandemic with Reference to Corporate Social Responsibility

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ABSTRACT

CSR (Corporate Social Responsibility) began with philanthropic approach by the industrialists to focus on the challenge of integrating and reconciling economic and social values in the context of changing expectation of the people. It has been observed from the Ministry of Corporate Affairs report, 2020 that out of 2014969 total registered companies only 12,15,973 companies are active, not even 2% of the active companies comes within the ambit of CSR in India. In a report by NGOBOX and CSRBOX "India CSR Outlook Report 2020", it is mentioned that out of top 5 companies that actually spend on CSR, 3 companies belong to private sector. In this time of pandemic out of total 269 companies, only 38 Public sector undertaking contribute towards CSR. Public sector undertaking account for 14% of India's total CSR spend. The author tries to examine the expenditures made on CSR activities by the private sector companies and public sector companies. Whether the expenditure made by private sector companies is more than the public sector undertakings? It has been further seen that the private companies are spending more than the prescribed amounts. The author further aims to understand the reasons that makes the private sector companies contribute more towards the CSR activities than Public companies in this time of crisis.

The Companies (CSR Policy) Amendment Rules 2021 provides for the treatment of unspent CSR amount. The author tries to figure out whether the making of Rules 2021

would be sufficient to solve the issues involved in the spending of CSR amount? As per the latest Rules, Impact assessment of CSR activities has been made mandatory. Lastly the author analysis whether it is required for the companies to undertake an assessment survey prior to the selection of any CSR activity and whether such impact assessment done by external agencies would improve the companies contribution towards the CSR activities in the present scenario.

To conclude the CSR is an old concept as now it is a time of Individual Social Responsibility (ISR). Individuals such as big business tycoons must also contribute towards CSR. Azim Premji, a philanthropist who donated Rs. 7904 crores in donation last year in the time of COVID 19 crisis to improve public system like health. He said that companies should not be legally mandated to engage in CSR rather it must come from within.

Keywords: Private Sector, CSR spend, COVID 19, Unspent CSR amount, ISR etc.

1) INTRODUCTION

"What corporations do to society is far more important than what corporations can do for society" -Peter Druker

The phrase "Corporate Social Responsibility" (CSR) has risen to the forefront of development discourse in India in the beginning of Twenty-First century. Surprisingly, the Indian government is taking the lead in defining the meaning, scope, and extent of CSR, as well as establishing the atmosphere in which the ongoing CSR debate is taking place. In the process, it also lends credibility to CSR's role in development. Following an amendment to the Companies Act, 2012 in April 2014, India became the first country in the world to make CSR mandatory.

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What is the role of business in society: To do well and to do good¹¹⁷? Is it always possible to do well while doing good? There is a wide debate and discussion on the impact of business in society. CSR is understood to the extent the business contributes towards the society and its development. In 1953, Howard Bowen¹¹⁸ reasoned in his book 'Social Responsibilities of Businessman' that if business valued broader social goals in its decisions, it must assume all purpose social and economic needs that accrues towards the society. The basic concept is to give back to the society, what business has taken from it in its pursuit of profits. Milton Friedman: "to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom"¹¹⁹.

Business has a responsibility which goes beyond profitability and reaches out to profit, people as well as planet: *a triple bottom line*¹²⁰- with the aim to achieve social development while achieving business success. Such responsibility may be termed as corporate environmental responsibility which can be summarized as the responsibility of business towards various stakeholders to take into account the environmental consequences of business activities and the long-term environmental needs.

adherence Recognizing that to Corporate Social Responsibility will redound to the goodwill and brand name of the company, responsible business organizations are adopting sound CSR practices as part of their core business strategy. In this, there is the recognition that the CSR is not a charity, but a necessary commitment to do good to the society in return for dividend that will accrue to the business in various forms, such as competitive edge in a world which is more and more conscious of the need for clean environment and green products.

The World Health Organization has classified COVID-19 as a global pandemic (WHO). The contagious disease wreaked havoc on the world's socioeconomic situation. In March 2020, the Government of India and the state governments announced lockdowns around the country in order to encourage social distancing, which essentially instructed the population to keep a social and physical distance.

Herein lies the significance of CSR, which played a critical role during the time of this pandemic, when people are trying their level best to get through this difficult time.

CSR is a "self-regulating business model" that describes how a firm interacts with its stakeholders and the general public in order to create a socially responsible scenario.

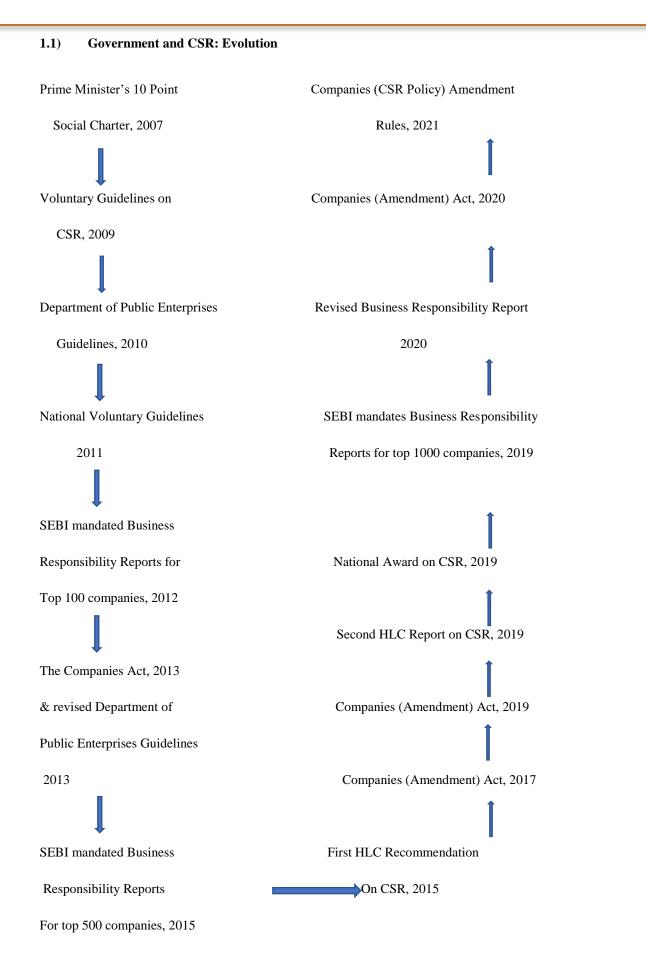
¹¹⁷ Oliver F. Williams. (2013). Corporate Social Responsibility: The role of business in sustainable development. Routledge.

¹¹⁸ Howard R. Bowen. (2013). Social Responsibilities of the Businessman. University of Iowa Press. ¹¹⁹ Milton Friedman. (1970, September 13). The Social Responsibility of

Business is to Increase its Profits. The New York Times.

¹²⁰ In 1994, John Elkington coined the phrase "triple bottom line" which means People + Planet = Social + Environmental Responsibility.

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1.2) Concept of Corporate Social Responsibility (CSR)

CSR has been defined by:

a) The **ISO 26000** working group has defined CSR as "the responsibility of an organization for the impacts of its decision and activities on society and the environment through transparent and ethical behavior that is consistent with sustainable development and the welfare of the society, takes into account the expectations of stakeholders, is in compliance with applicable law and consistent with international norms of behavior and is integrated throughout the organization¹²¹."

¹²¹ ISO 26000: Guidance on Social Responsibility. (2012). https://www.tuv.com/media/informationcenter_1/systems/Corporate_ Social_Responsibility.pdf

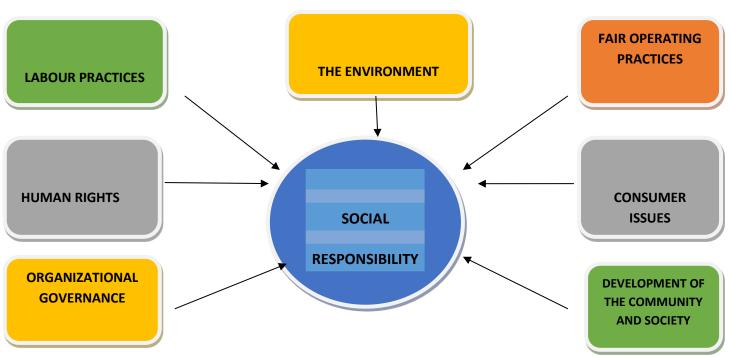


Chart 1: Areas of social responsibility that organizations needs identify.

b) According to the leading magazine CSR Asia, "Corporate Social Responsibility is a company's commitment to operating in an economically, socially and environmentally sustainable manner while balancing the interests of diverse stakeholders."

2) AN ANALYSIS OF CSR SPENDING IN PSUs AND PRIVATE COMPANIES IN INDIA

In a report by NGOBOX and CSRBOX "India CSR Outlook Report 2020" it is mentioned that out of top 5 companies that actually spend on CSR, 3 companies belongs to private sector. Out of total 269 companies, only 38 Public sector undertaking contribute towards CSR. Public sector undertaking account for 14% of India's total CSR spend. It has been observed that the private sector companies are spending¹²² more than the prescribed amounts¹²³. It has been further noticed that private companies have their own trusts, foundations for implementing CSR initiatives, but PSU's worked with external NGO's for their projects. Is this the reason why expenditure made by private sector companies is more than the public sector undertakings?

Total Number of registered companies in India by June 2020¹²⁴

Active Companies	12,15,973
Closed Companies	7,46,278
Companies Under Liquidation	6706

¹²² CSRBOX and NGOBOX. (2020). India CSR Outlook Report. https://csrbox.org/media/India%20CSR%20Outlook%20Report%202020-CSRBOX.pdf ¹²³*Id.*

¹²⁴ Ministry of Corporate Affairs. Government of India. (2020). Incorporated or Closed during the month. http://www.mca.gov.in/MinistryV2/incorporatedorclosedduringthemonth.html

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Dormant Companies	2242
Companies being struck off	43770
Total registered Companies	2014969

From the above table it is observed that out of 2014969 total registered companies only 12,15,973 companies are active, not even 2% of the active companies comes within the ambit of CSR in India.

Analysis of the filing made by companies on CSR (2014-15 to 2019- 20)¹²⁵

Total amount spent on CSR (2014-2020)

YEAR	NUMBER OF COMPANIES	AMOUNT SPENT ON CSR
		(Crores)
F.Y. 2014- 15	16548	10066
F.Y. 2015-16	18292	14517
F.Y. 2016- 17	19549	14342
F.Y. 2017- 18	21450	13890
F.Y. 2018- 19	24932	18655
F.Y. 2019- 20	1075	7823
(Covid 19 Year)		

From the above table, it has been analyzed that only 50% of prescribed CSR amount is being spent actually whereas for the remaining 50% of the amount, the companies gave reason for not spending the CSR amount. The reason given by the companies for the unspent CSR fund has been classified below¹²⁶:

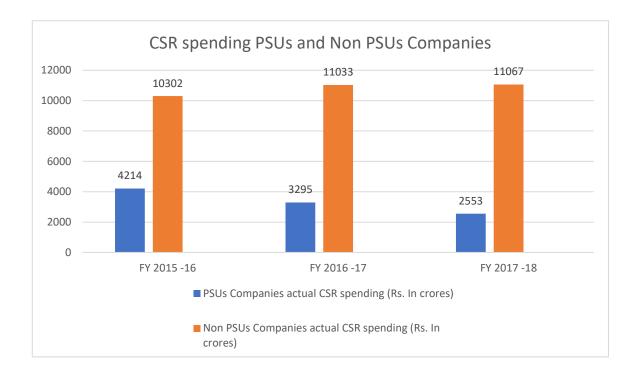
- 1) Long term projects
- 2) Budget sanctioned, project yet to start
- 3) Identifying partners & projects
- 4) Reason not mentioned
- 5) Approvals pending from PRI or Government authorities
- 6) Other reasons

¹²⁵ National CSR Data Portal. Ministry of Corporate Affairs. Government of India. (2020). CSR Data PSU-Non PSU Report. https://www.csr.gov.in/static_report.php
¹²⁶ Supra Note 6.

After the introduction of Companies Act 2013, it is mandatory for the companies to disclose their CSR expenditure in the annual reports. The responsibility for the enforcement of the Act and its regulation is given to the Ministry of Corporate Affairs. The table shows the CSR expenditure done by PSUs and Private sector companies in India¹²⁷.

Nature of		FY 2015 -10	6		FY 2016 -	17		FY 2017 -	18
Company	No. of Compa nies	Total Amount Spent (in Cr.)	Average Spending	No. of Compa nies	Total Amount Spent (in Cr.)	Average Spending	No. of Compa nies	Total Amount Spent (in Cr.)	Average Spending
PSU	532	4215	7.9	546	3296	6.04	527	2553	4.84
NON-PSU TOTAL	17,758	10,303 14,518	0.58	18,993 19,539	11,034	0.58	20,870 21,397	11,067 13,620	0.53

¹²⁷ Ministry of Corporate Affairs. Government of India. (2020). Annual Report 2019-20. https://www.mca.gov.in/Ministry/pdf/AnnualReport2019_20_17042020.pdf



The Table and chart show that in the year 2015-16, CSR expenditure of 18290 companies was Rs. 14518 crores, out of which 532 PSUs companies were spending Rs. 4215 crores being 29.03 percent of the total amount. The average expenditure of per PSUs companies was Rs.7.9 crores which was much higher in comparison to private sector companies" i.e., 0.58 crores. Non-PSU companies contributing Rs. 10,302.52 crores toward CSR activities in 2015-16 being 70.96 percent of total expenditure. In 2016-17, a larger number of PSUs companies were spending less amounts for CSR activities. The total expenditure and average spending of each company was witnessed decreasing trend. In 2017-18, Only 527 PSUs companies done Rs. 2553 crores. The average of per company PSU expenditure in the 2017-18 registered the significant decrease and reached to Rs.4.84. This indicates that PSUs companies are not significantly devoting more and more part of the profit for society. The 20870 Non-PSUs companies were spending Rs.11067 cores being 81.25% of total expenditure during the year 2017-18, however the growth is more than PSUs companies and registered a continuous increasing trend.

3) HIGHLIGHTS OF NEW CSR POLICY

The Ministry of Corporate Affairs has notified the Companies (**CSR** Policy) Amendment Rules, 2021 vide a notification dated 22nd January 2021, which seeks to amend the Companies (**Corporate Social Responsibility Policy**) Rules, 2014. As per the amendment rules, following points are required to be highlighted:

- Implementation of CSR: The company's board of directors will ensure that the CSR activities are carried by the company itself or through any of the following entity:
 - (a) "A company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company,
 - (b) A company established under section 8 of the Act or a registered trust or a registered society,

established by the Central Government or State Government;

- (c) Any entity established under an Act of Parliament or a State legislature
- (d) A company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and has an established track record of at least three years in undertaking similar activities^{,128}.
- Website Disclosure: To ensure transparency, the Company's Board of Directors must disclose the composition of the CSR Committee, as well as the CSR Policy and Projects approved by the Board, on their website for public access¹²⁹.
- Transfer of Unspent CSR amount: Mandatory transfer of unspent CSR amount is required¹³⁰. The Companies (CSR Policy) Amendment Rules 2021 provides that the unspent amount shall be treated in the following manner:

Unspent Amount (Section 135(7) of the 2013 Act)

Unspent CSR Account

(within 30 days of the end of the F.Y.)

Amount shall be spent by the companies in pursuance of its obligation towards the CSR Policy within a period of three F.Y. Transfer the same to a fund specified in Schedule VII, within a period of 30 days from the date of completion of the third F.Y.

- **4. CSR Expenditure**: According to the Companies (CSR Policy) Amendment Rules, 2021, the administrative overheads should not exceed five per cent of the total CSR expenditure of the company for the financial year¹³¹.
- CSR Reporting: The Board's Report of a company about any financial year shall include an annual report on CSR¹³².
- 6. Impact Assessment has been made mandatory. Every company having average CSR obligation of Rs.10 Crore or more in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees¹³³.

4) ROLE OF CORPORATES TOWARDS CSR DURING COVID - 19

COVID-19 was declared a public health emergency of international concern by the World Health Organization (WHO) on January 30, 2020. A global health crisis of this magnitude has necessitated extraordinary resource reorganization in terms of both speed and scope of mobilization. In the period of the COVID-19 pandemic, where businesses are attempting to cope with this tremendously difficult moment, CSR is playing a critical role.

According to Section 135 of Companies (CSR) Rules, 2014 and Schedule VII of Companies Act 2013:

¹²⁸ Rule 4. (2021). Companies (CSR Policy) Amendment Rules.

¹²⁹ Rule 9. (2021). Companies (CSR Policy) Amendment Rules.

¹³⁰ Rule 10. (2021). Companies (CSR Policy) Amendment Rules.

¹³¹ Rule 7. (2021). Companies (CSR Policy) Amendment Rules.

¹³² Rule 8. (2021). Companies (CSR Policy) Amendment Rules.

¹³³ Rule 5. (2021). Companies (CSR Policy) Amendment Rules.

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"Every company with a net worth of Rs 500 crore or more or turnover of Rs 1,000 crore or more or net profit of Rs 5 crore or more during the immediately preceding financial year, must have a CSR committee and spend at least 2 per cent of average net profits earned during three immediately preceding financial years to CSR activities".

The Government of India is encouraging businesses to provide social support in the COVID-19 period. All expenses paid on activities relating to COVID-19 would be added as permitted avenues for CSR expenditure, according to a Ministry of Corporate Affairs (MCA) Circular dated March 23, 2020.¹³⁴.

"Funds may be spent for various activities related to COVID-19, under the following items of Schedule VII:

- Eradicating hunger
- Poverty
- Malnutrition
- promoting healthcare, including preventive healthcare
- Sanitation, including contribution to the Swachh Bharat Kosh set up by the Centre for promoting sanitation and making available safe drinking water
- Disaster management, including relief, rehabilitation and reconstruction activities"

Corporate India welcomed the announcement made by the Ministry. It produced a win-win situation for corporations with existing CSR obligations and funds at disposal who wished to donate to relief while also meeting the Companies Act's statutory requirements.

Further the MCA has been issuing circular on time-to-time basis to provide clarification on spending of CSR funds for $COVID - 19^{135}$. These circulars are discussed below:

¹³⁵ Ministry of Corporate Affairs. Government of India. Acts & Rules. https://www.mca.gov.in/content/mca/global/en/actsrules/ebooks/circulars.html

General Circular	Spending CSR funds on COVID 19 is	
No. 10/2020,	qualified CSR activity. Under item	
dated 23.03.2020,	nos. (i) and (xii) of Schedule VII	
provides	dealing to healthcare promotion,	
clarification on the	including preventive healthcare,	
use of CSR	sanitation, and disaster management,	
funding for	funds may be used for a variety of	
COVID - 19.	COVID 19-related activities.	
General Circular	Under item no. (i) (ii) and (vii) of	
General Circular No. 01/2021,	Under item no. (i), (ii), and (xii) of	
,	Schedule VII of the Companies Act,	
dated 13.01.2021,	2013, spending CSR funds on	
provides	awareness campaigns/program me or	
clarification on the	public outreach efforts on COVID 19	
use of CSR money	Vaccination programme is an	
for public	approved CSR activity.	
awareness and		
public outreach on		
the COVID 19		
Vaccination		
Program.		
General Circular	Under item nos. (i) and (xii) of	
No. 05/2021,	Schedule VII of the Companies Act,	
dated 22.04.2021,	2013, using CSR funds for 'setting up	
provides	makeshift hospitals and temporary	
clarification on the	COVID care facilities' is an approved	
use of CSR	CSR activity.	
funding to		
establish		
makeshift		
hospitals and		
temporary COVID		
care facilities.		
Conoral Carrela	Sponding CSD finds in (most)	
General Circular	Spending CSR funds on 'creating	
No.: 09/2021,	health infrastructure for COVID care,'	
dated:	'establishing medical oxygen	
05.05.2021,	generation and storage plants,'	
provides	'manufacturing and supply of oxygen	
Clarification on	concentrators, ventilators, cylinders, and other medical equipment for	
spending of CSR	and other medical equipment for	

 ¹³⁴ Ministry of Corporate Affairs. Government of India. (2020). Clarification on spending of CSR funds for COVID 19.https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1OTc =&docCategory=Circulars&type=open
 ¹³⁵ Ministry of Corporate Affairs. Government of India. Acts & Rules.

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funds to be used	countering COVID 19,' or similar	
for things like	activities are all eligible CSR	
"building health	activities under Schedule VII of the	
infrastructure for	Companies Act, 2013.	
COVID care," "establishing medical oxygen generating and storage plants," and other things.	Companies Act, 2013. Contributions to certain research and development projects, as well as contributions to publicly funded universities and certain organizations engaged in conducting research in science, technology, engineering, and medicine, are all considered eligible CSR activities under Schedule VII of the Companies Act, 2013.	
E-file no. CSR-	MDs/CEOs of the top 1000 firms by	
E-me no. CSR- 01/4/2021-CSR-		
01/ 1/2021 0.011	market capitalization were urged to	
MCA, dated: 20th May 2021,	donate generously to the "Prime Minister's Citizen Assistance and	
clarification on	Relief in Emergency Situations Fund"	
repaying the	(PM CARES Fund). It was indicated	
excess CSR spend	that such a donation might include	
for FY 2019-20.	any unspent CSR funds as well as	
	funds in excess of the minimum	
	mandated CSR amount for FY 2019-	
	20, which could be used to offset CSR	
	obligations in future years.	
General Circular	Spending CSR funds on COVID – 19	
No. 13/2021,	vaccination for people other than	
dated:	employees and their families qualifies	
30.07.2021,	as a CSR activity under Schedule VII,	
provides	item (i) of the Companies Act, 2013.	
clarification on the		
use of CSR		
funding for		
COVID – 19 immunization.		
minumzation.		

The table below shows the contributions made by various companies in India towards CSR Healthcare projects¹³⁶:

COMPANY	PROJECT	CSR PROJECT
		BUDGET
Tata Consultancy	Health and	176.00 crores
Services Ltd	Wellness Program	170.00 crores
Services Etd	Wenness Program	
ITC Limited	Promotion of	110.61 crores
	Healthcare and	
	Hygiene	
Bharat Petroleum	COVID -19 relief	100.10 crores
Corporation	efforts	100.10 crores
Limited	enorts	
National Mineral	Contribution	58.42 crores
Development	towards	
Corporation Ltd	healthcare,	
(NMDC)	nutrition, water	
	and sanitation	
Oil and Natural	Healthcare	58.24 crores
	Promotion	38.24 crores
Gas Corporation Ltd (ONGC)	Promotion	
Lid (ONGC)		
ITC Limited	Watershed	57.62 crores
	Development	
	Program	
South Eastern	Toilet	52.02 and 12
South Eastern Coalfields	Construction	52.02 crores
Limited	Program	
Mahanadi	Promotion of	51.40 crores
Coalfields	Healthcare and	
Limited	sanitation	
	Dromotics	49.09
NHPC Limited	Promotion of	48.08 crores
	Healthcare and	

Top 10 CSR Healthcare Projects

¹³⁶ CSRBOX. Top Healthcare CSR Projects. https://csrbox.org/Top-Healthcare-csr-projects-in-india

	sanitation	
National Thermal	Healthcare	47.83 crores
Power	Promotion	
Corporation Ltd		
(NTPC)		

The answer to the government's request to support COVID-19 efforts has been overwhelmingly positive. Various government funds have received crores of rupees in donations. Given the large sums of money at stake in the relief operations, corporations are having difficulty not just identifying a reliable implementing partner, but also determining how to monitor and manage the usage of donated funds and analyse their impact.

Following the government's announcement that any sum provided by businesses in favour of the fight against COVID-19 will be counted as CSR, the majority of businesses contributed to the PM CARES Fund or to other causes that helped to safeguard the health and prevent hunger among the impacted.

Such activities were ethically and morally correct, but the corporations interpreted the Ministry's Circular in a way that would reap indirect benefits to their operations or just contribute to the existing fund.

5) CONCLUSION & SUGGESTIONS

CSR is not charity now rather a necessity. Only the making of rules is not sufficient or will solve the problem. Strict penalty is required to be imposed as nothing happens to the defaulter. The recording of reasons for the unspent CSR amount will not solve the problem. We should erase the limit set under section 135 of the companies act 2013 so that any company or individual can contribute towards CSR activities in this time of pandemic. In case of violation of section 135 of the Act, section 450¹³⁷ of 2013 Act must be

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attracted and the defaulter must be penalized accordingly, otherwise the provision of section 135 is meaningless.

The Corporate Social Responsibility (CSR) is an old concept as now it is a time of Individual Social Responsibility (ISR). Individuals such as big business tycoons must also contribute towards CSR. The amendment in the Act is needed and not rules so that strict action can be taken against the defaulter. If no strict laws are made, the companies will fulfill obligations in paper only.

Azim Premji, a philanthropist who donated Rs. 7904 crores in donation last year in the times of COVID 19 crisis to improve public system like health. He said that companies should not be legally mandated to engage in CSR rather it must come from within.

The COVID-19 pandemic has ushered in a new era in which businesses must be more responsible and responsive. The contemporary era has forced global and corporate leadership to take the lead, particularly in terms of employee safety, efficiently conducting core operations, and adapting to change. It is clear that businesses' efforts have been directed not only at serving the intended beneficiaries, but also toward resolving national issues. Companies are working hard to keep their workers safe and secure. This has also been translated into CSR efforts. In response, CSR should spend in pushing for and facilitating access to health insurance schemes, as well as other equity measures. In terms of the thematic areas where healthcare has received the most attention and work, Climate change, water, sanitation, and socioeconomic challenges such as livelihood, hunger, and poverty, as well as rural development, are some areas that will require major attention. Employees have promised to join the global fight against the epidemic, in addition to corporate houses. To respond to the present scale of health emergencies, practices such as employee and volunteer engagement are becoming increasingly vital. To properly assess, comprehend, and quantify the impact of short-term and long-term actions, it is necessary to understand and assess the CSR response

¹³⁷ Section 450. (2013). The Companies Act.: Punishment where no specific penalty or punishment is provided: ".... the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend

to one thousand rupees for every day after the first during which the contravention continues".

from a readiness, response, recovery, and risk reduction & resilience viewpoint.

The COVID-19's impacts have put corporate social responsibility to the test like never before. Companies from a variety of industries have seized the chance to further integrate themselves into the social fabric of the areas in which they operate. CSR offers a mechanism to protect customer trust, investor confidence, and employee loyalty in this context. If there is one thing we can all remember, it is that CSR practices may be quite effective while dealing with a crisis.