

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, BENGALURU

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**Lucidity bent to make way for Perplexity: A
Corporate Social Responsibility Analysis**

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TABLE OF CONTENTS

CERTIFICATE	3
DECLARATION	4
ACKNOWLEDGEMENT	5
THESIS STATEMENT	6
INTRODUCTION TO PERPLEXITY	6
I. CSR facing a barrage of laws: A Menace	7
1.1 CSR History: Pre-Pandemic Analysis	7
1.2 Developments in Schedule VII amidst Pandemic	8
1.3 CSR Amendments in 2021	9
II. MANDATING A PHILANTHROPIC WORK	10
2.1 Analyzing Amendment 2021	11
2.2 Irony in Funds created under Schedule VII	11
2.3 Corporate funding: ‘So called’ philanthropy	14
III. ANALYSIS OF PM CARES FUND	14
3.1 Collection of Funds	15
3.1.1 <i>Fund lacks transparency</i>	16
3.1.2 <i>Ownership in question</i>	16
3.1.3 <i>Centre and State: Conflict of interest</i>	17
3.2 Paucity of Funds in NGO’s	17
CONCLUSION	18
BIBLIOGRAPHY	19
ANNEXURES	23

CERTIFICATE

This is to certify that this dissertation titled “**Lucidity bent to make way for Perplexity: A Corporate Social Responsibility Analysis**”, submitted by Atharv Arya (LL.M- Business law) in partial fulfilment of the requirements for the Degree of Master of Laws to National Law School of India University, is a bona fide research work carried out under my guidance and supervision.

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Place: September 1,2021.

DECLARATION

I, the undersigned, solemnly declare that this dissertation titled “**Lucidity bent to make way for Perplexity: A Corporate Social Responsibility Analysis**” submitted to National Law School of India University, Bengaluru for degree of Masters of Law, is an original and bonafide research work carried out by me under the supervision of my guide. It was not submitted, in whole or in part, for a degree in any prior application. The information contained in this work is true to the best of my knowledge.

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With Profound Gratitude

Atharv Arya

THESIS STATEMENT

The paper empirically argues that the corporates, which earlier, had sole discretion in selecting the bonafide beneficiaries of their CSR funds is now, being impaired through government directives. It also covers how the diversion of CSR funds impacts its spirit.

INTRODUCTION TO PERPLEXITY

“Government by secrecy benefits no one. It injures the people it seeks to serve; it damages its own integrity and operation. It breeds distrust, dampens the fervor of its citizens and mocks their loyalty.”¹

Why is the letter of law only to be abided with and not the spirit in which it was enacted? Corporate Social Responsibilities activities which used to be categorically a philanthropic work, in no time, is seen to have become a quintessential business strategy. This paper will help unravel the facts that there is an overregulation and a lot of government intervention in the diversion of CSR funds. The funds on which the corporates had complete discretion for their disbursement, which has now dissipated as the funds are being divested into public charitable trusts. These charitable trusts, which have been created lately, not only eviscerate the CSR objectives but also prove to have a vicious cycle. The cycle embeds the fact that the firm’s money which could have been directly invested, now goes to an account of which the outflow is hard to trace. Yes, trusts like PM Care Funds is being talked of. It is barred by RTI, it not only creates secrecy but jeopardises the cause for which it was assigned to be utilized. This is what is leading to an era of politicizing bonafide donations. The first half of the paper would be highlighting the change in the landscape of CSR i.e. laws governing CSR pre-pandemic, amidst pandemic and onwards. The second half of the paper brings into limelight, the changes that were introduced in the recent years have a detrimental impact on the CSR objectives. Lastly, the paper deals with the nuances and the complexities that have resulted due to the funding of these trusts.

¹ Russel B. Long, 'Russell B. Long Quote' (Quotefancy.com)
<<https://quotefancy.com/quote/1644435/Russell-B-Long-A-government-by-secrecy-benefits-no-one-It-injures-the-people-it-seeks-to>> accessed 16 August 2021.

I. CSR FACING A BARRAGE OF LAWS: A MENACE

Landscape of CSR activities have changed along with the inclusion of changes brought forth in the laws. Hence it is quintessential to understand from the inception till the present time the changes that have been introduced in order to acknowledge the menace.

1.1 CSR History: Pre-Pandemic Analysis

India is the first country in the world to make CSR mandatory, following an amendment to the Companies Act, 2012 in April 2014.² As per the data given in the **Report of the High-Level Committee on Corporate Social Responsibility 2018**. There had been a drastic increase in CSR reporting in the year 2014-15 to 2016-17 which took a dip in the year 2017-18.³ The total CSR increased substantially by forty-four per cent from 2014-16 and thereafter marginally declined in 2016-17.⁴ The table below suggests that though there was a reduction in the reporting companies but the CSR amount had increased

Table 1: CSR expenditure by Companies reporting on CSR⁵

Year of Filing	No. of companies Private Reported	PSU Reported	Total CSR amount spent (in Rs. Cr.)
FY 2014-2015	10,083	335	10,065.93
FY 2015-2016	12,551	404	14,503.65
FY 2016-2017	12,810	372	14,312.03
FY 2017-2018	11,314	270	13,326.69

² Rusen Kumar, 'Corporate Social Responsibility (CSR) For Better India - India CSR Network' <<https://indiacr.in/csr-in-india/>> accessed 12 August 2021.

³ 'REPORT OF THE HIGH-LEVEL COMMITTEE ON CORPORATE SOCIAL RESPONSIBILITY 2018' (Government of India Ministry of Corporate Affairs 2019) <https://www.mca.gov.in/Ministry/pdf/CSRHLC_13092019.pdf> accessed 16 August 2021.

⁴ *ibid.*

⁵ *ibid.*

This is due to the laws becoming stringent as the years progressed for instance there were no penalties under Section 135 with regard to any unspent amount. But the Companies (Amendment) Act, 2019, Section 135 subsection (7) was incorporated which levied criminal liability and fine.⁶

Schedule VII of the Companies Act over the recent years has also undergone frequent changes as there have been inclusion of more CSR activities. As per Schedule VII few major heads of CSR activities are as follows:

- “Aid in Eradication of extreme hunger and poverty;
- Helping to Combat diseases such as HIV, AIDS, malaria etc;
- Creation of sustainable Environment;
- Contribution to the Prime Minister’s National Relief Fund or any other fund set up by the Central Gov; etc.”⁷

In the **Annexures** (*Figure 2*), data pertaining to contributions (in Percentage) in different sectors as under Schedule VII can be witnessed. But witnessing the past won’t suffice to have a lucid knowledge of barrage of laws. The recent developments in Schedule VII are also to be looked upon.

1.2 Developments in Schedule VII amidst Pandemic

CSR activities as discussed in the earlier portion are of year 2019. As we progressed towards the year 2020 and with the pandemic impacting India, a new charitable trust called the PM CARES Fund was created. The ‘PM CARES Fund’ abbreviation for ‘Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund’ has been included in Schedule VII a copy of the letter is attached in the **Annexures** (*Figure 1*) for kind reference. The letter was addressed to Ministry of Corporate Affairs for the inclusion of PM CARES fund. In furtherance to that the Ministry of Corporate Affairs issued a general circular which stated that any contribution made to the PM CARES Fund shall qualify as CSR (Corporate Social Responsibility)

⁶ Ministry of Law and Justice, ‘THE COMPANIES (AMENDMENT) ACT, 2019’ (The Gazette of India 2019).

⁷ Vasundhara Singh and others, ‘The Changing Landscape of CSR in India during COVID-19’ (Invest India 2020)

expenditure.⁸ PM CARES Funds as under Schedule VII, accepts voluntary donations and also qualifies for 100% tax exemption.⁹

In January 2021, MCA introduced another activity that is carrying out awareness programmes or public outreach campaigns for COVID-19 vaccination programmes would be counted as CSR expenses and that it would come under the ambit of Schedule VII.¹⁰ Similarly in May 2021, MCA published another circular stating that funds used for “creating health infrastructure for COVID care,” “establishment of medical oxygen generation and storage plants,” “manufacturing and supply of oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19” or similar such activities are also eligible CSR activities under Schedule VII.¹¹ With the most recent circular being in July, 2021 MCA clarified that expenditure incurred for vaccination of persons other than the employees and their families would be eligible as a CSR activity.¹² Other than the changes under Schedule VII, there were amendments brought forth in the **Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021**.

1.3 CSR Amendments in 2021

A crucial change that was introduced was that of undoing the draconian ‘**2019 Amendment**’,¹³ pertaining to criminal sanctions. In the year 2021, the government made it a civil offence.

As per the ‘**2021 Amendments**’ section 4(2)(a): Every entity covered under sub-rule (1), which intends to undertake any CSR activity, shall register itself with the Central Government¹⁴ and thereafter obtain a unique CSR registration number. After which this unique registration number is to be mentioned in the annual reports as per the

⁸ Ministry of Corporate Affairs, 'Clarification on Contribution to PM CARES Fund as Eligible CSR Activity Under Item No. (Viii) Of the Schedule VII of Companies Act, 2013' (Government of India, Ministry of Corporate Affairs 2020)

⁹ 'Donation Faqs' (Pmcares.gov.in) <<https://www.pmcares.gov.in/en/web/page/faq>> accessed 06 August 2021

¹⁰ Ministry of Corporate Affairs, 'Clarification on Spending of CSR Funds for Awareness and Public Outreach On COVID-19 Vaccination Programme- Reg.' (Government of India, Ministry of Corporate Affairs 2021)

¹¹ Ministry of Corporate Affairs, 'Clarification on Spending of CSR Funds for 'Creating Health Infrastructure for COVID Care', 'Establishment of Medical Oxygen Generation and Storage Plants' Etc.- Reg.' (Government of India, Ministry of Corporate Affairs 2021).

¹² Ministry of Corporate Affairs, 'Clarification on Spending of CSR Funds for COVID-19 Vaccination-Reg' (Government of India, Ministry of Corporate Affairs 2021)

¹³ Ministry of Law and Justice, 'THE COMPANIES (AMENDMENT) ACT, 2019' (Ministry of Law and Justice 2021).

¹⁴ 'Ministry of Corporate Affairs, Notifications' (Mca.gov.in, 2021) <https://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_23012021.pdf> accessed 12 August 2021.

format given in the Amendments,2021.¹⁵ The other changes that have been introduced are as follows: -

- Definition of CSR
- Directional to mandatory CSR (refer to the next chapter of this paper)
- Registration requirements for Implementing partners
- Internal control rigidity increased
- Impact creation.¹⁶

These amendments besides inculcating numerous protocols have given a rigid tangent making CSR extremely problematic. Furthermore, frequent changes in Schedule VII impede the decision making of business organizations. The organizations generally allocate funds in a structured and planned manner to incorporate continual support to the beneficiaries with year wise allocation. Hence in order to have a lucid understanding the next part dwells into the aspect of unravelling the perplexities of these funds, amendments in Schedule VII etc.

II. MANDATING A PHILANTHROPIC WORK

Over the years there has been a frequent change in CSR laws and rules, MCA is seen to have been shooting circulars frequently making laws malleable to the circumstances. The goal of CSR activities should be either to achieve Sustainable Development Goals or to achieve certain set of fixed standards. Changing the laws according to the dire need, not only complicates and hinders business activities of organizations, but also disrupts the other CSR activities that are mentioned in Schedule VII.

CSR activities should not be bent according to the need of the government i.e. the government under the garb of financial paucity in a particular sector cannot open gates for CSR contributions. Elucidation of the complexities in '2021 Amendment', contradictions the funds pose and the CSR unspent amount evasion are dealt with as we move forward.

¹⁵ CSR Amendment Rules (n 14).

¹⁶ 'Implications Of The Companies (Corporate Social Responsibility Policy) Amendment Rules 2021' (home.kpmg/in, 2021) <<https://home.kpmg/in/en/home/events/2021/01/implications-of-companies-csr-amendment-rules-2021.html>> accessed 11 August 2021.

2.1 Analyzing Amendment 2021

The ‘**CSR spending**’ now has such mandatory mandates which can be seen as follows:¹⁷

- The unspent amount not relating to ongoing projects to be transferred to Government funds notified in Schedule VII of the Companies Act.
- The unspent amount relating to an ongoing project is to be transferred to Unspent CSR Account and used within immediate succeeding 3 FYs in pursuance to CSR policy.
- Amount transferred to Unspent CSR Account remaining unspent at the end of immediate succeeding 3 FYs is to be transferred to Government funds under Schedule VII.
- The company’s Board is to monitor implementation of ongoing projects and shall be the competent authority to make modifications (if any required).
- On Board’s approval, excess CSR spending is allowed to be carry forwarded for succeeding 3 FYs.¹⁸

Furthermore, if the company is not able to spend the CSR amount then the board in its annual report ‘shall’ specify the reasons for not being able to spend the amount. But if the unspent amount not relates to any ongoing project then the amount is to be transferred to a fund as specified in Schedule VII.¹⁹It’s hard to believe that this money is aimed for a voluntary, noble and a social cause because recent laws make it look like a corporate liability and failure of which makes corporates give money to the government. To put it simply in a quote “Your failure, Our money”. The money being referred to here will go to the trusts (under Schedule VII) and it is these trusts which are in themselves pretty much questionable as discussed as we proceed.

2.2 Irony in Funds created under Schedule VII

A general circular on **Frequently Asked Questions**²⁰ with regard to CSR dated 12th January,2016 published by the MCA says that- “CSR should not be interpreted as a

¹⁷ The Institute of Company Secretaries of India, 'Faqs On Corporate Social Responsibility' (The Institute of Company Secretaries of India 2021)

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ Ministry of Corporate Affairs, 'Frequently Asked Questions with Regard to Corporate Social Responsibility Under Section 135 of the Companies Act,2013' (Government of India, Ministry of Corporate Affairs 2016)

source of financing the resource gaps in the Government Schemes.”²¹The FAQs also point out that “CSR fund should not be used as a source of funding Government Schemes”. Moreover, the **Recommendations** of the **High Committee Report on Corporate Social Responsibility, 2018**²² stated that “Contribution to Central Government funds as specified in Schedule VII be discontinued as CSR spend.”²³ Yet there was Prime Minister National Relief Fund (PMNRF) which functioned for events such as calamities, on top of that PM CARES Fund was also introduced.

Companies cannot spend on awards, ‘charitable contribution’ etc. as their CSR project as that would not tantamount to CSR expenditure.²⁴ On the contrary funds under VII of the Companies Act, 2013 such as: -

- (i) Swachh Bharat Kosh for the promotion of sanitation;²⁵
- (ii) Clean Ganga fund for rejuvenation of river Ganga;²⁶
- (iii) Prime Ministers National Relief Fund (PMNRF);²⁷
- (iv) Prime Minister’s Citizen Assistance and Relief in Emergency Situations fund (PM CARES fund).²⁸

The amount donated to these funds is nothing more than ‘charitable contribution’. This clearly makes it evident that the **FAQs** as released by MCA²⁹ are not in consonance with the funds/trusts created. **As the FAQs state that activities that do not qualify as CSR activities is that of ‘charitable contribution’. PM CARES Fund clearly states that it is a public charitable trust³⁰ hence, the money so donated by the company should technically be considered as charitable contribution!**

²¹ *ibid.*

²² Report CSR 2018 (n 2).

²³ 'Report of the High-Level Committee on Corporate Social Responsibility 2018' (Government of India Ministry of Corporate Affairs 2019) <https://www.mca.gov.in/Ministry/pdf/CSRHLC_13092019.pdf> accessed 06 August 2021

²⁴ The Institute of Company Secretaries of India, 'Frequently Asked Questions (FAQs) With Regard to Corporate Social Responsibility Under Section 135 Of the Companies Act, 2013.' (The Institute of Company Secretaries of India 2016)

²⁵ 'Swachh Bharat Kosh' (Sbkosh.gov.in) <<http://sbkosh.gov.in/>> accessed 05 August 2021

²⁶ 'About CSR' (Nmcg.nic.in) <<https://nmcg.nic.in/csr/csrabout.aspx>> accessed 07 August 2021

²⁷ 'Prime Minister's National Relief Fund' (Pmnrf.gov.in) <<https://pmnrf.gov.in/en/about>> accessed 03 August 2021

²⁸ 'About PM CARES Fund | Prime Minister of India' (Pmindia.gov.in) <<https://www.pmindia.gov.in/en/about-pm-cares-fund/>> accessed 01 August 2021

²⁹ ICSI FAQs CSR (n 20).

³⁰ 'About PM CARES Fund | Prime Minister of India' (Pmindia.gov.in) <<https://www.pmindia.gov.in/en/about-pm-cares-fund/>> accessed 01 August 2021

The Corpus donations made to registered public trust or a registered society or a Section 8 company qualify as CSR expenditure based on the condition, premise that they are created exclusively for undertaking CSR activities or where the corpus is created exclusively for a purpose directly relatable to a subject covered under Schedule VII.³¹ Moreover, in the case of *Sukhdeo Charity Estate v. Commissioner of Income-Tax*³²; it was observed that “the donations received by a charitable trust for specific purposes may be said to be corpus.”

So, this raises a very essential question that is: How do such charitable trusts and contributions made to them not count as CSR Expenditure? The afore mentioned points highlight the friction and shatter the spirit in which the CSR activities were meant to be conducted. In light of this if the **Annexures** (*Figure 6,7,8*) are referred, then we see the amount received and the disbursement of funds. A major setback of this data as put by funds is that the amount cannot be ascertained from these charitable trusts. How much amount was received by these trusts from CSR contributions made by the companies and how much was utilized for social cause in detail will never be known.

Lastly, there is overlap in the function of trusts like for instance, there is already a disaster related fund known as the PMNRF whose objectives are in line with the PM CARES fund then why was there a need to create a different fund! The PMNRF fund states that “The resources of the PMNRF are now utilized primarily to render immediate relief to families of those killed in natural calamities like floods, cyclones and earthquakes, **etc.**”³³. The word ‘etc.’ as stated in the objectives not only widens the ambit of the usage of funds but is also the operative part in here and this brings into question. When there is a similar fund which has operations of similar nature then why a need for creating new fund?

It’s a complete paradox as the money received by these public charitable trusts cannot be inter utilized. Hence creating new funds/trusts unnecessarily blocks the underutilized money and eventually blocking the disbursal channel. For instance, the Apex Court said that PMNRF and PM CARES Fund both have a different role and the court cannot do such things such as the transfer of funds.³⁴The apex court listed

³¹ Ajay Kumar, 'Corpus Contributions: Whether CSR?' (Vinodkothari.com, 2021)

<<https://vinodkothari.com/2021/03/corpus-contributions-whether-csr/>> accessed 10 August 2021

³² *ibid.*

³³ 'About CSR' (n 26).

³⁴ *Centre for Public Interest Litigation v. Union of India*, W.P.(Civil) No.546 of 2020

the reasons as to why funds cannot be transferred by it to the National Disaster relief Fund.³⁵

2.3 Corporate funding: ‘So called’ philanthropy

When a company has an option of simply transferring the prescribed amount into a fund, rather than invoking penal consequences for the ‘unspent’ money. Then why won’t the company simply do it! When companies have an easy option why on earth would they not exercise this option and opt for brain storming, using corporate resources to cumbersome planning, checking the credentials of the beneficiaries and monitoring the fund utilization. This, visibly, defeats the rationale of CSR, which propagates integrating the societal interests with business objectives.³⁶ The most important concerns about this fund is that though this fund says voluntary, yet, which appears to be mandatory in nature. The luring benefits such as 100% tax exemption paves way for corporate organizations to spend the amount reserved for other CSR activities to be donated to the funds as listed under Schedule VII. Besides this corporations would like to build a good rapport with the ruling government henceforth donations in these funds can become more of a ‘**people pleasing**’ initiative.

The other concerns are that the Corporations undertake CSR activities to behoove social spheres and aid the NGO’s that are involved in philanthropic work. But, when such trusts *viz.* PMNRF or PM CARES fund are created the corporate entities are simply making donations as they do not know disbursement of these funds.

The emphasis is not on the utilization of funds, but that the corporations won’t ever get to know as to where their CSR amount actually utilized. The creation of such charitable trusts is a way to fill government coffers in a legit way. Transferring of money to a government fund under Schedule VII is not CSR, but none other than a fund raiser. We shall subsequently now deal with a fund recently inserted in Schedule VII of companies Act in order to justify the afore mentioned statements.

III. ANALYSIS OF PM CARES FUND

This chapter deals with the catastrophic effects the funds/trusts (Schedule VII) have on CSR as a philanthropic work. Analyzing from the collection to the repercussions

³⁵ *ibid.*

³⁶ Shiv Nath Sinha, 'Corporate Social Responsibility in India A Case of Government Overregulation?' (www.epw.in, 2021) <<https://www.epw.in/journal/2021/26-27/special-articles/corporate-social-responsibility-india.html>> accessed 11 August 2021

this public charitable trust has. If we see the **Annexures** (Figure 6) then it will be clear as to how there is secrecy and that the trustees have absolute discretion on the information they wish to share. Moving ahead to subsequent portions in this chapter will give more clarity on this issue.

3.1 Collection of Funds

Top CSR spends have been recorded in the table listed below which the fund called the PM CARES trust received. These PM CARES received funds from government agencies i.e. PSUs and the Private companies. A caveat is that these CSR activities exclude voluntary donations of the individuals, small organizations etc. In the **Annexures** (Figure 3,4,5) a detailed list of amounts received by the PM CARES Fund is covered.

Table II: CSR Funds from Government agencies³⁷

Sr. No.	PSUs	Amount (in Rs. Cr.)
1.	ONGC	300
2.	NTPC	250
3.	Indian Oil	225
4.	Power Finance Corp.	200
5.	Power Grid	200
6.	NMDC	155
7.	REC	150
8.	BPCL	125
9.	HPCL	120
10.	Coal India	100

Table III: Funds from Private Organizations³⁸

Sr. No.	Private Companies	Amount (in Rs. Cr.)
1.	Reliance Industries	500
2.	Tata Group	500
3.	Aditya Birla Group	400

³⁷ Shyamlal Yadav, 'Corporates to Banks: Funds for PM Cares from Public and Private' (2021) <<https://indianexpress.com/article/india/corporates-to-banks-funds-for-pm-cares-from-public-and-private-7223101/>> accessed 08 August 2021

³⁸ *ibid.*

4.	Larsen & Turbo	150
5.	Adani Enterprises	100
6.	Hero Motors	50
7.	Infosys	50
8.	Mahindra & Mahindra	20
9.	Tech Mahindra	20

Additionally, other contributions were received to the PM CARES fund, in response to the appeal made to the companies to contribute.³⁹

Tryst with the fault lines...

3.1.1 Fund lacks transparency

The major flaw of this charitable trust is that it lacks transparency and accountability. Hence this fund could be mis utilized or as per the whims and fancies of the controlling authorities. Also, this fund has been kept out of the ambit of RTI. Former Finance Minister, Mr. P. Chidambaram remarked, “the fund received Rs 3,076 crore in just five days”⁴⁰, but the “names of these generous donors will not be revealed”. Whereas, on the other hand we see that “Every other NGO or Trust is obliged to reveal the names of donors contributing more than a threshold amount. Why is the PM CARES Fund exempt from this obligation?”⁴¹ Furthermore, Mr. Sitaram Yechury, General Secretary CPI(M) tweeted, “Fraud compounded! Fund set up via govt notification but not answerable to RTI.”⁴²

3.1.2 Ownership in question

The trustee of the funds are the PM and three ministers which opened floodgates for couple of questions that are as follows: “Was the Fund set up by the Central government as concluded by the Ministry of Corporate Affairs? Who set up the Fund

³⁹ Indian Companies Contributing To PM-CARES Fund to Fight COVID-19' (Investindia.gov.in, 2021) <<https://www.investindia.gov.in/team-india-blogs/indian-companies-contributing-pm-cares-fund-fight-covid-19>> accessed 05 August 2021

⁴⁰(2020)<<https://economictimes.indiatimes.com/news/economy/finance/pm-cares-fund-got-rs-3076-crore-in-just-five-days-according-to-the-account-statement/articleshow/77890927.cms>> accessed 04 August 2021

⁴¹ ibid.

⁴² Shemin Joy, 'PM-CARES Owned by Govt But Cannot Be Under RTI, Says New RTI Response' (Deccan Herald, 2020) <<https://www.deccanherald.com/national/national-politics/pm-cares-owned-by-govt-but-cannot-be-under-rti-says-new-rti-response-932026.html>> accessed 06 August 2021

and in what capacity?”⁴³ If the Fund was not set up by the central government, why are the PM and three Ministers serving as Trustees? Who appointed them as Trustees?”⁴⁴“If the Fund is a private established fund, why are donations to the Fund counted against CSR? The retrospective amendment in favour of a privately established fund is obviously an act of favouritism and discriminatory.”⁴⁵

3.1.3 Centre and State: Conflict of interest

Public health is the subject of the state list therefore, states are responsible to implement relief measures. Hence the question arises that why CSR/contribution should not be channelized through the CMs’ relief funds for better and more efficient management during extreme distress emergencies such as Covid-19?⁴⁶ Moreover the parliamentary committee recommended the government to consider inclusion of CMs’ relief fund in the Schedule VII of the Companies Act, 2013, so that contributions made to CM relief funds also qualify as CSR expenditure.⁴⁷

3.2 Paucity of Funds in NGO’s

Most of the funds in the year 2020 and 2021 were apportioned to PM CARES Fund. As a result, the NGO’s and other subjects under schedule VII that used to receive fund regularly, dried out. There was a major setback to these organizations that received funds annually on regular basis. These NGOs became defunct as the flow of the funds nearly dried out.

Amod Kanth, the founder of the NGO, Prayas, and Coordinator NITI Aayog Standing Committee says “The amount that we get from CSR has been drastically cut down”. According to him there will be a cut of 40-50% percent in their CSR funding.⁴⁸ The reason behind this cut in funds is because of the PM CARES (Prime Minister’s Citizen Assistance and Relief in Emergency Situation) Fund. Furthermore, he adds that CSR funds are one of the main sources of donation for service provider NGOs.

⁴³ Financial Express, 'Why Count Corporate Donations to PM Cares Under CSR If Fund Privately Established: P Chidambaram' (2020) <<https://www.financialexpress.com/india-news/why-count-corporate-donations-to-pm-cares-under-csr-if-fund-privately-established-p-chidambaram/2061674/>> accessed 03 August 2021

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ Aditi Tandon, 'Treat Donations to Cms’ Relief Fund As CSR: Panel' Tribune News Service (2021).

⁴⁷ *ibid.*

⁴⁸ Poonam Agarwal, 'PM CARES Gets Most of CSR Funding: Other Ngos Struggling for Funds' (2021) <<https://www.thequint.com/news/india/pm-cares-receives-csr-fund-marks-50-cut-in-ngos-fundinghttps://www.thequint.com/news/india/pm-cares-receives-csr-fund-marks-50-cut-in-ngos-funding>> accessed 04 August 2021

Since March 2020, a substantial chunk of CSR fund has deviated to PM CARES Fund.⁴⁹ As per 2016-2017 data NGOs used to receive Rs. 6,499 crores from abroad. Now even the foreign funding will shrink as the public charitable trusts receive great amount of funding. The NGOs who are the rightful recipients of these funds and always put them to good use (which is always accounted for) were unfortunately deprived of these funds.

As per a survey conducted it was found that the annual average CSR budget in India is approximately (Rs. 15,000 crore). Out of which the larger chunk (Approx. Rs. 10,000 crores i.e. 2/3rd of the whole amount comes from top 300 companies.⁵⁰ From the contribution as made by these top companies (**Annexures: Figure 3,4,5**) it can be figured out that more than the half of annual CSR budget—INR 7,863 crore has been invested towards COVID-19 relief measures. Of which the larger pie/proportion of the funds has gone to the PM-CARES Fund.⁵¹ Lastly, in the **Annexures (Figure 2)** the CSR expenditure of past few years is captured making it evident of the flow of funds to other sectors of Schedule VII. These sectors would now face the brunt and so will the NGOs because of PM CARES Fund.

CONCLUSION

After due consideration to the factual inputs, detailed analysis and studying the implications of the new notifications and guidelines related to the CSR funding. Issued by the government and served to the corporates through the ministry of corporate affairs. It becomes more and more evident that the discretionary control which the corporates rightfully enjoyed over their CSR funding and monitoring its rightful usage by their beneficiaries, has eroded substantially. There is plethora of ways the government can arrange funds but using money that is rightfully entitled for social cause should not be touched upon. These public charitable trusts under Schedule VII are a bane for the objectives of CSR. After going through the PM CARES fund the readers will get a lucid idea as to what devastating effects these trusts can have on CSR objectives and on other sectors of Schedule VII, Companies Act.

⁴⁹ Agarwal (n 48).

⁵⁰ Ayesha Marfatia, 'Is PM-CARES Diverting Money Away from Nonprofits?' (India Development Review, 2020) <<https://idronline.org/is-pm-cares-diverting-money-away-from-nonprofits/>> accessed 11 August 2021

⁵¹ *ibid.*

In my view it is setting wrong precedents which shall have far fetching effects and may make easy passage for gross impropriety. If dismissive attributes of the government continue and the funds function the way they are functioning now. Then it can rightfully be said that the whole spirit of CSR is smothered and the true essence and purpose has faded.

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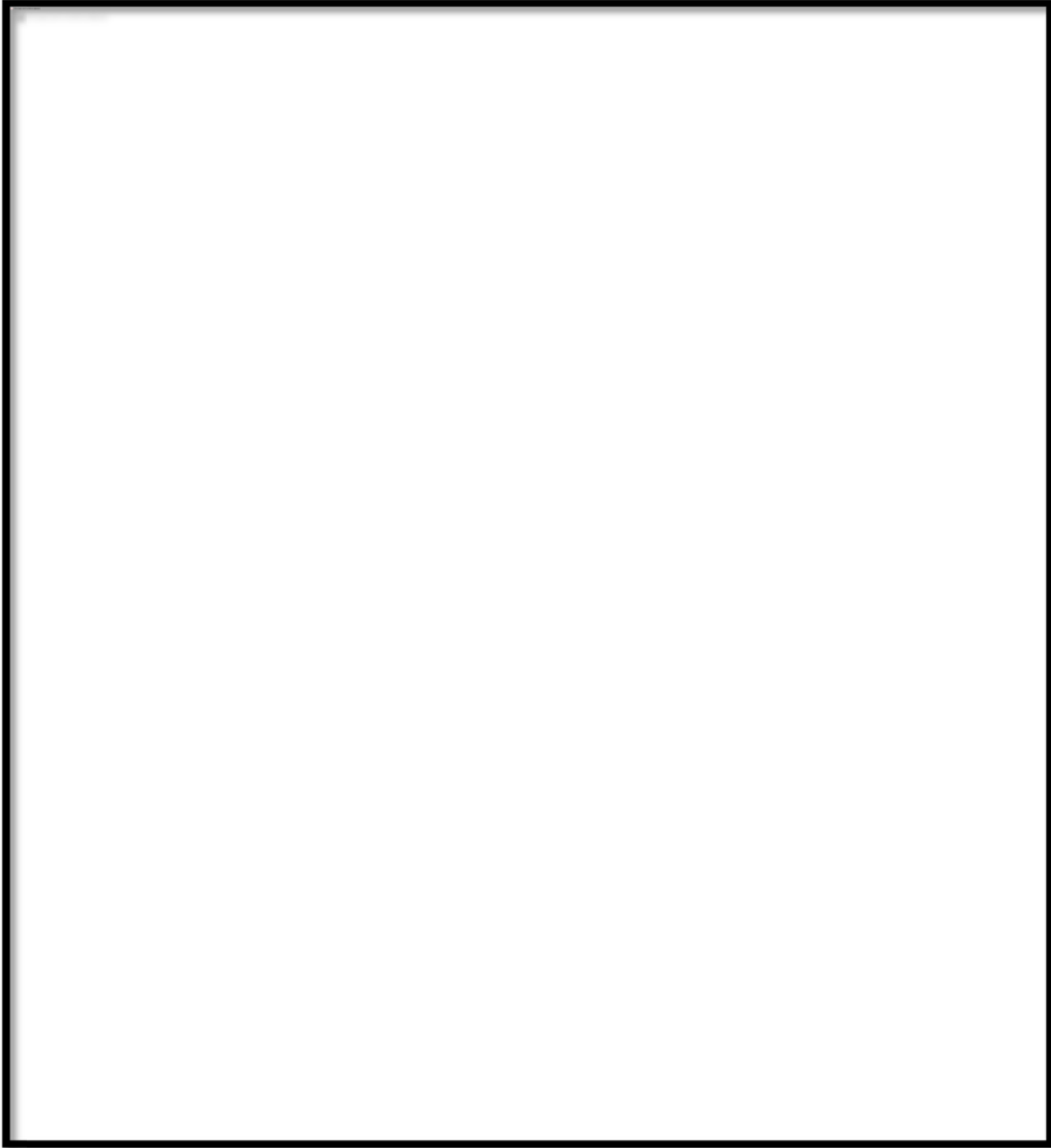


Figure 1: *Letter Addressed to Ministry of Corporate Affairs*<
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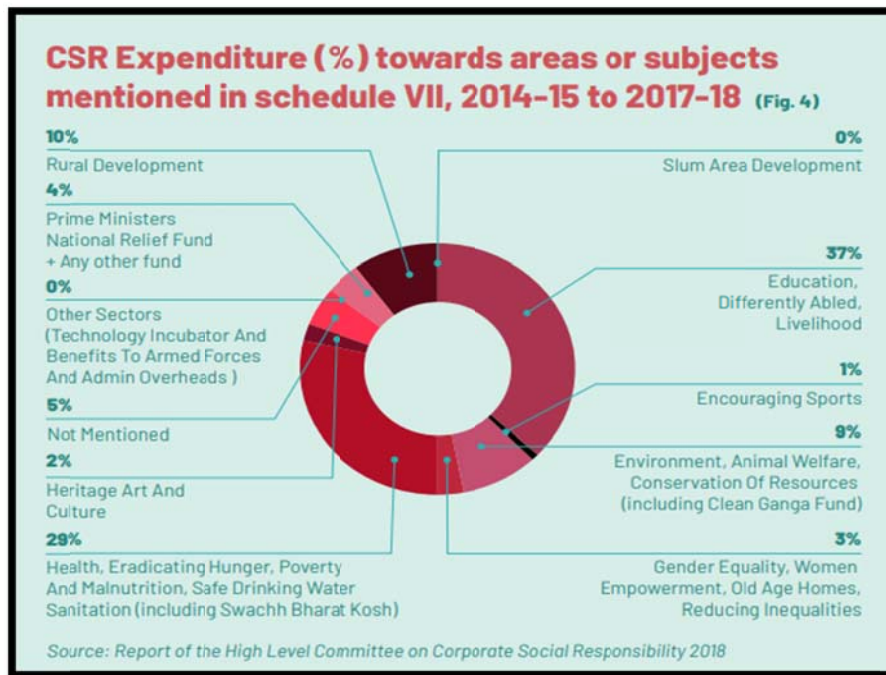


Figure 2: CSR expenditure data

<<https://www.investindia.gov.in/siru/changing-landscape-csr-india-during-covid-19>>

Name of the Company	Contribution to fight against COVID-19
Infosys Foundation	Infosys Foundation provides Rs 50 crore to PM CARES Fund. It also contributes additional Rs 500 crore to be utilised for providing testing kits, masks, ventilators, food and nutrition to the poor persons. It also joined hands with Narayana Hospitals to provide 100 beds quarantine facility.
ITC Ltd	ITC Ltd sets up a covid-19 Contingency fund of Rs 150 crore to provide financial assistance to the district and rural health cares for the poor Indian citizens.
State Bank of India	SBI employees provide Rs 100 crore to PM CARES Fund. SBI also announced to provide 0.25% of its net profit of financial year 2019-20 to combat against covid-19.
Hindustan Unilever Ltd	HUL, along with providing Rs 100 crore, reduces prices of Lifebuoy sanitizers. It also donates Lifebuoy sanitizers, Domex bathroom and floor cleaners, soaps, hand washes, health kits to the hospitals and underprivileged persons.
TCS	It prioritizes itself in providing covid-19 patient trackers, health kits, ventilators for the poor persons. TCS ION Digital Class room software empowers students for online learning facilities.
Reliance Industries Ltd	RIL provides the first 100 bed covid-19 hospital, 50 lakh free meals, one lakh masks, free fuel for emergency vehicles, daily wise 1000 PPE for health care workers. It also provides Rs 500 crores to PM CARES fund

Figure 3: Contributions by Companies < <https://csrbox.org/how-Indian-companies-responding-COVID19>>

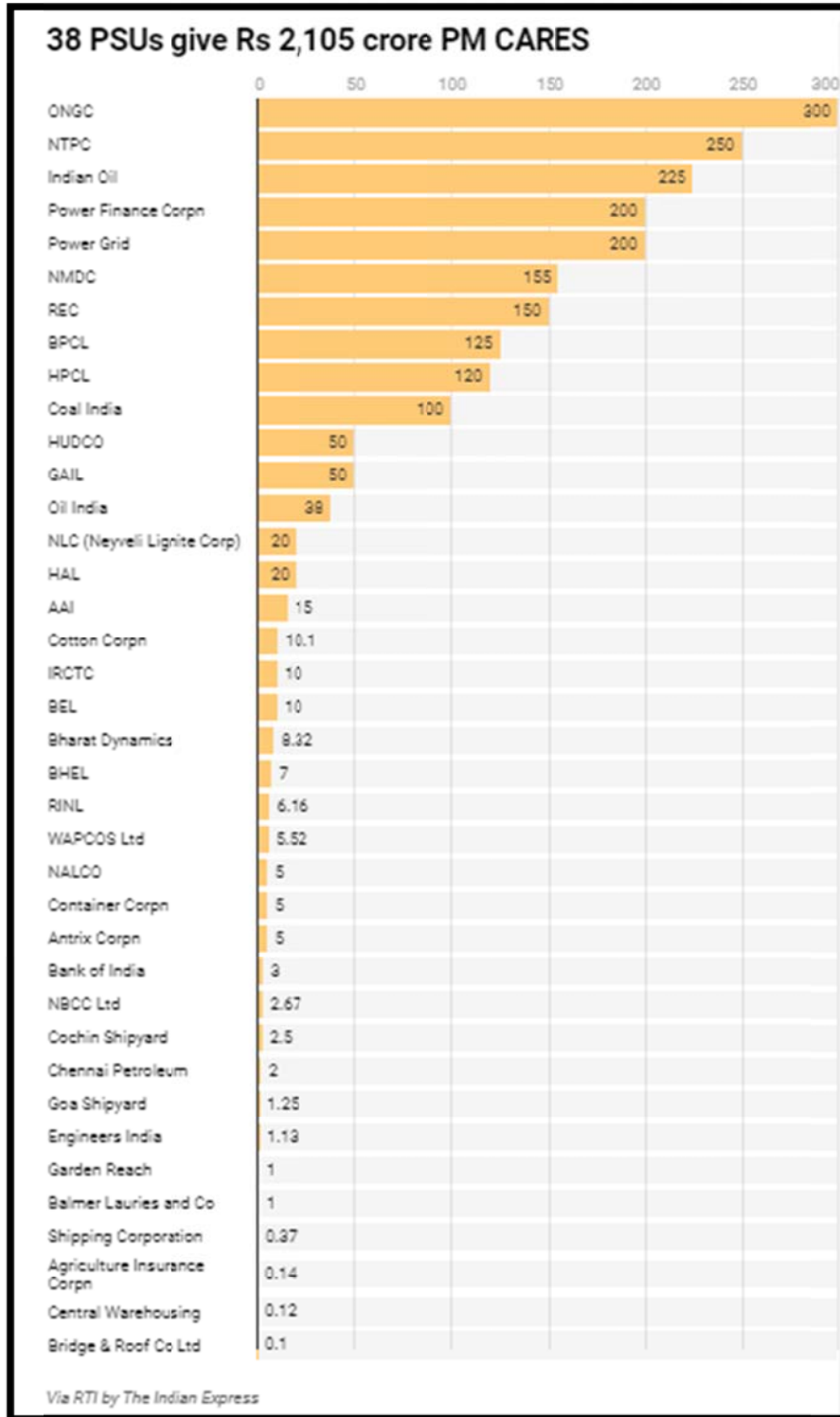


Figure 4: PSUs CSR Contribution <

<https://indianexpress.com/article/india/maharatnas-to-navratnas-38-psus-give-rs-2105-crore-from-csr-to-pm-cares-6560452/>>

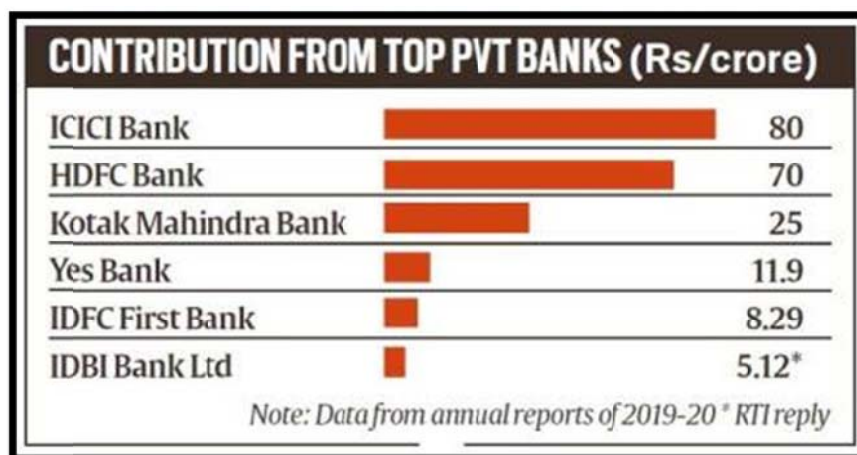


Figure 5: CSR CONTRIBUTION<

<https://indianexpress.com/article/india/corporates-to-banks-funds-for-pm-cares-from-public-and-private-7223101/>>

PM CARES
Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund

Home About Donate Print Receipt FAQs Contact Us

The Trustees of the PM CARES Fund have powers to formulate rules/criteria for carrying out any of the Objectives of the Trust.

Q.15 What is the quantum of funds collected under PM CARES Fund during last year?
During 2019-20, an amount of Rs. 3076.62 Crore was collected under PM CARES Fund.

Q.16 What is quantum of contribution received in foreign currency in PM CARES fund during last year?
During 2019-20, an amount of Rs. 39.68 lakh was collected in foreign currency in PM CARES Fund.

Q.17 How much money has been sanctioned from PM CARES Fund?
So far, an amount of Rs. 3100 Crore has been allocated from PM CARES Fund for the following activities:-
a. Rs. 2000 Crore : For supply of 50,000 'Made-in India' ventilators to Government Hospitals run by Centre/States/UTs
b. Rs. 1000 Crore : For care of migrant labourers (funds allotted to State/UT Govts.)
c. Rs. 100 Crore : For vaccine development

Q.18 How will be a formal donation receipt issued to the donors?

Figure 6: FAQs of PM CARES Fund<<https://www.pmcared.gov.in/en/web/page/faq>**>**

PMNRF ABOUT PMNRF - DONATE ONLINE TRANSACTION HISTORY DOWNLOADS FAQs - CONTACT US

Q.4 What is the quantum of funds collected under PMNRF during last 10 years?

The quantum of funds collected under PMNRF during last 10 years is as follows:-

Financial Year	Amount Collected (Rs. in crore)
2010-2011	28.44
2011-2012	22.76
2012-2013	17.59
2013-2014	375.97
2014-2015	608.68
2015-2016	497.47
2016-2017	244.98
2017-2018	236.63
2018-2019	534.22
2019-2020	481.67

Figure 7: FAQs of PMNRF < <https://pmnrf.gov.in/en/faqs/pmnrf>>

PMNRF ABOUT PMNRF - DONATE ONLINE TRANSACTION HISTORY DOWNLOADS FAQs - CONTACT US

Q.6 What is the quantum of funds disbursed under PMNRF during last 10 years?

Details of funds disbursed under PMNRF during last 10 years is as follows:-

Financial Year	Amount Disbursed (Rs. in crore)
2009-2010	143.90
2010-2011	182.33
2011-2012	128.43
2012-2013	181.62
2013-2014	293.62
2014-2015	372.29
2015-2016	624.74
2016-2017	204.49
2017-2018	180.85
2018-2019	212.50

Figure 8: FAQs of PMNRF < <https://pmnrf.gov.in/en/faqs/pmnrf>>