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**FRAUDULENT PRACTICES UNDER THE GARB OF CORPORATE  
SOCIAL RESPONSIBILITY IN INDIA AND WHAT CAN BE DONE TO  
CURB THIS MENACE**- Swareena Pokley<sup>1</sup>**ABSTRACT**

Earlier, Corporate Social Responsibility (CSR) used to be a voluntary philanthropic activity but now it has been made mandatory in India by virtue of Section 135 of The Companies Act, 2013. It is the only country to have made it compulsory under law. This has paved way for various other problems and driven towards corporate social “irresponsibility”. This paper discusses at length the nittygritties of the inescapable provision, thereby suggesting effective measures that can be adopted to curb the menace. It is backed by numerous incidents that have time and again proven that CSR is being exploited by individuals as well as the government. The purpose and principle of philanthropy is being defeated at the hands of corporations. Even the government is misusing CSR to achieve their political goals and to evade tax. There have been several occasions of scams and fraudulent practices that India has witnessed in the recent years. The paper begins with defining CSR with a few examples and discussing applicable legal provisions. It goes on to address the actual problems and hurdles being caused due to its compulsory nature and how companies are misusing CSR with profit making marketing strategy. Drawing attention towards the muddles of CSR, the endeavor is to analyze the deceitful strategies used by corporations to fabricate their wrongdoings. This will assist in settling down to the possible and effective measures to slow down the exploitation. There is a dire need to correct the unethical behavior and fulfil the purpose behind corporate social responsibility.

**KEYWORDS:** Corporate Social Responsibility; Abuse of CSR: Companies Act 2013; Shareholder; Evading Tax

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**INTRODUCTION:**

Corporate Social Responsibility (CSR) is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.<sup>2</sup> Also called as corporate citizenship, it is a business model that puts in conscious efforts to enhance the quality of society and environment rather than degrading it. It is a philanthropic movement which also caters to the brand's publicity while benefitting the society, creating strategic benefits for the society as well as the organisation's stakeholders.<sup>3</sup> CSR evaluates how the company conducts its business and how the company manages its relationships with a broad range of stakeholders such as employees, local communities, creditors, consumers, and the environment.<sup>4</sup>

Here are a few examples of CSR activities carried on by well-known brands.

- Coca Cola manufactures 100% recyclable bottles to reduce carbon footprint. Likewise, Starbucks started serving their beverages in reusable cups instead of plastic. They have invested in loan programs for coffee-growing farmers to help improve coffee quality.<sup>5</sup>
- Mahindra & Mahindra an automobile manufacturer, established K C Mahindra Education Fund and Mahindra Foundation with an aim to promote education amongst the economically and socially underprivileged communities. They also run various programs for girls' education and health care facilities.<sup>6</sup>
- TATA Group is best known for their philanthropic activities and is one of the top 10 companies for CSR in India. Their initiatives revolve around healthcare facilities, women empowerment, support service for differently abled, skill training and primary education.<sup>7</sup>

Given the nature of the activity, it is typically assumed to be a voluntary initiative rather than a

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<sup>2</sup>WHAT IS CSR? | UNIDO <<https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr>> last visited 26 October 2021.

<sup>3</sup>LEE BURKE AND JEANNE M LOGSDON, HOW CORPORATE SOCIAL RESPONSIBILITY PAYS OFF 495 (Long Range Planning 1996) .

<sup>4</sup> HARPER HO V BEYOND REGULATION: A COMPARATIVE LOOK AT STATE-CENTRIC CORPORATE SOCIAL RESPONSIBILITY AND THE LAW IN CHINA 400, (Vanderbilt J Transnational L 2013)

<sup>5</sup>FARMER SUPPORT CENTERS | STARBUCKS COFFEE COMPANY <<https://www.starbucks.ph/responsibility/ethical-sourcing/farmer-support>> last visited 25 October 2021.

<sup>6</sup>CORPORATE SOCIAL RESPONSIBILITY IN INDIA - INDIA BRIEFING NEWS <<https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/>> last visited 29 October 2021.

<sup>7</sup>INDIA'S TOP 10 COMPANIES FOR CSR INITIATIVES IN 2018 <<https://crossbarriers.org/indias-top-companies-for-csr-initiatives-in-2018/>> last visited 28 October 2021.

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legal mandate.<sup>8</sup> But, India is the only country in the world to have made corporate social responsibility compulsory for private companies via law. CSR is governed by **Section 135 of The Companies Act, 2013; Schedule VII of the Companies Act, 2013; Companies Corporate Social Responsibility Rules 2014.**

The Companies Act, 2013 makes it mandatory for every company with a net worth of ₹500 crore or more or turnover of ₹1,000 crore or more or a net profit of ₹5 crore or more during the immediately preceding financial year to spend 2 per cent of the average net profits of the immediately preceding three years on CSR activities and in case of failure to do so, the unspent amount, unless it is for an ongoing project of the company, it must be transferred to Schedule VII funds like the Prime Minister's National Relief Fund, or any other fund set up by the Central or the State Governments. Under Section 135, it also requires every such company to establish a Corporate Social Responsibility Committee to monitor the Corporate Social Responsibility Policy of the company from time to time.<sup>9</sup> **Schedule VII** of the Companies Act enlists variety of activities as subjects that can be counted towards CSR. Under **Section 135(3)** CSR committee is supposed to draft and recommend to the board a CSR policy indicating the activities that can be undertaken and covered under schedule VII.

Corporate organisations are entrusted with pious obligations to reimburse the society for each asset procured for their own benefit. Not all the companies have a dedicated team for CSR management which often leads to misappropriation of funds. They appoint a couple of employees to supervise or sometimes even that is taken care of by the Human Resources team. This gap has made way for fraudsters to exploit and siphon these philanthropic funds.<sup>10</sup> CSR has conveniently become a profit-making marketing strategy for corporations.

The purpose of Corporate social responsibility has been defeated since organization misuse it for tax evasion or personal gains. It is an irony that the responsibility is being fulfilled with utmost irresponsibility. Companies try to dodge this responsibility and have discovered ways to avoid paying towards CSR. Government isn't too behind in misusing the CSR funds to either hit their political goals or evade tax. Scherer & Palazzo refers to this situation as "new political role of corporations".<sup>11</sup> Individuals have also started scamming people in the pretext of CSR

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<sup>8</sup> LI-WEN LIN MANDATORY CORPORATE SOCIAL RESPONSIBILITY LEGISLATION AROUND THE WORLD: EMERGENT VARIETIES AND NATIONAL EXPERIENCES

<sup>9</sup> The Companies Act, 2013

<sup>10</sup> FRAUDS IN CORPORATE SOCIAL RESPONSIBILITY (CSR) ACTIVITIES IN INDIA - THE CSR JOURNAL <<https://thecsrjournal.in/frauds-in-corporate-social-responsibility-csr-activities-in-india/>> last visited 25 October 2021.

<sup>11</sup> Scherer, A. G., & Palazzo, G. *The new political role of business in a globalized world: A review of a new perspective on CSR and its implications for the firm, governance, and democracy* 48 (JOURNAL OF

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under the name of big companies. Surprisingly, Non-Governmental Organisations have exploited the money donated to them by companies in order to comply with their CSR policy. Profit is the only motive behind philanthropic activities at the cost of society and environment. There are various loopholes and pitfalls associated with the CSR mandates and organizations have managed to exploit them in various manners. This paper lists down the deceitful strategies they fabricate and effective measures that can be adopted to avoid this in the future.

## 1. MUDDLES OF CORPORATE SOCIAL RESPONSIBILITY

Let us have a look at the several occasions of scams and fraudulent practices that India has witnessed in the recent years.

### 1.1 INSTANCES OF DODGING CORPORATE SOCIAL RESPONSIBILITY

Hindustan Unilever Limited was spending a lot of money in educating people of underdeveloped rural areas about good hygiene practice. It did not qualify as CSR activity because they derived direct benefits from this, and it appeared more of a marketing strategy since they primarily dealt with toiletries and detergents. It was a smart move to make the campaign look like CSR activity on its face value while promoting their own business to the target customers.<sup>12</sup>

Advantage India is a Delhi based Non-Governmental Organization which was booked in 2007 by the Central Bureau of Investigation (CBI) for misusing its CSR funds. The NGO was accused of flouting several provisions of Foreign Contribution Regulation Act (FCRA) and misused the charitable donations made to it by a UK based company for personal gains. The funds amounted to Rs 90.72 crore. They showed bogus expenses and overpriced gadgets purchased through these CSR funds and it was also found that they had registered nonexistent addresses on the bank statements and invoices.<sup>13</sup>

In 2019, an unidentified man started a pan India scam, asking seven different corporations to donate money as CSR funds to himself. He went to the extreme limits of forging Hexaware

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MANAGEMENT STUDIES, 899–931 (2011).

<sup>12</sup>FAILURE OF CSR IN INDIA <[https://taxguru.in/company-law/failure-csr-india.html#\\_ftn24](https://taxguru.in/company-law/failure-csr-india.html#_ftn24)> last visited 26 October 2021.

<sup>13</sup>CBI FILES FIR AGAINST CORPORATE LOBBYIST, NGO OVER MISUSE OF CSR FUNDS | LATEST NEWS INDIA - HINDUSTAN TIMES <<https://www.hindustantimes.com/india-news/cbi-files-fir-against-corporate-lobbyist-ngo-over-misuse-of-csr-funds/story-278i8W6UCK8l2hIdl8lr0M.html>> last visited 25 October 2021.

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<https://www.ijalr.in/>

Technologies' documents and went around asking for charitable donations of worth over 100 crores throughout India in the name of the company.<sup>14</sup>

## 1.2 MISUSE BY PUBLIC SECTOR UNDERTAKINGS

After a few instances like these, the Companies Amendment Bill 2019 proposed that the unused funds that were supposed to be contributed towards CSR should be deposited in funds set up by the government for public welfare. The step was taken in order to increase transparency and accountability of the procedure. Otherwise, the purpose of CSR was being defeated either by fraudsters or the company itself. The funds that were transferred to the government depository were then misused by the government officials and senior staff of Public Sector Undertakings (PSU).

National Aluminium Company Limited (NALCO) is a Central Public Sector Enterprise under the Ministry of Mines, India. The company was supposed to spend 45 lakhs from peripheral development fund on a backward area Koraput, but instead it donated that amount to a private institution. NALCO also earmarked another Rs 3 crore as endowment fund for the university as part of its CSR activities. Their in-house vigilance department filed a complaint, and the probe began to disclose the difference between their actions and what was listed on the documents. Crores of rupees were directed towards a particular private university.<sup>15</sup>

In 2013, Central Bureau of Investigation (CBI) initiated investigation against Steel Authority of India Limited (SAIL) for misusing its CSR funds and former Steel Minister Beni Prasad Verma was questioned in this regard. He was accused to have misdirected these funds to run his political campaign and by investing more than half of it in two Uttar Pradesh districts under him.<sup>16</sup> SAIL's CSR funds were misused by hiring choppers for ministers and managing public relations (PR). A Public Interest Litigation was filed against it for not complying with the guidelines issued by Department of Central Enterprises regarding CSR activities.

## 1.3 TAX EVADING STRATEGY BY PUBLIC SECTOR UNDERTAKINGS

The Prime Minister's Citizen assistance and Relief in Emergency Situations Fund (PM CARES Fund) was created on March 28, 2020, to raise funds in the ongoing battle against COVID-19 pandemic. The donations made to this fund were to be counted as a part CSR

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<sup>14</sup>POLICE UNCOVER CSR FUNDING SCAM - The Hindu

<<https://www.thehindu.com/news/cities/mumbai/police-uncover-csr-funding-scam/article27006141.ece>> last visited 25 October 2021.

<sup>15</sup>NALCO PROBED FOR MISUSE OF CSR, PD FUNDS - INDIAN EXPRESS

<<http://archive.indianexpress.com/news/nalco-probed-for-misuse-of-csr-pd-funds/1026767/>> last visited 26 October 2021.

<sup>16</sup>Failure of CSR in India (n 9).

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activity as it was notified by the Ministry of Corporate Affairs. Contributions made towards the PM CARES Fund are exempted completely from tax under Section 37 of the Income Tax Act 1961 and qualify for benefits under the same act. 38 PSUs made contributions of around INR 21,000 crores in total. It became an easy way out for these companies to fulfil the criteria of CSR without committing any extra time and efforts on the actual CSR activities, while saving on taxes and utilizing the added benefit under the Income Tax Act 1961.<sup>17</sup>

#### **1.4 GHOST BENEFICIARIES**

One of the companies was spending money on a healthcare facility service only to find out later that the funds were going out in the names of patients that didn't even exist. A listed company was supplying water coolers worth INR 2 lakh per unit to schools in Delhi, only to find out that the authorities spent on units worth INR 50,000-60,000 and pocketed the unspent CSR amount.<sup>18</sup>

#### **1.5 GREENWASHING AND CORPORATE SOCIAL RESPONSIBILITY**

Greenwashing is a practice followed by corporate institutions to portray their products and services as environment friendly, when in reality they are not. The misleading claims are made to keep the company in the good light by showcasing their approach towards sustainable development. People have become conscious about degrading environment and prefer environmentally sound products. Companies use these growing demands as their marketing gimmick. Companies tally their greenwashing score with CSR score as an attempt to convey that they have complied with the mandates.

## **2. EFFECTIVE MEASURES THAT CAN BE ADOPTED TO CURB THE MENACE:**

### **2.1 ROBUST CORPORATE GOVERNANCE**

Corporate governance is a set of rules and principles used to direct and manage a company. It refers to the accountability of the board of directors to its stakeholders. A good governance reflects stability in the organization and improves its credibility. It is one of the

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<sup>17</sup>CORPORATE SOCIAL RESPONSIBILITY AND TAX EVASION | LEGAL MAXIM

<<https://www.legalmaxim.in/corporate-social-responsibility-and-tax-evasion/>> last visited 25 October 2021.

<sup>18</sup>CSR SPENDS AND THE MENACE OF GHOST BENEFICIARIES - REDIFF.COM BUSINESS

<<https://www.rediff.com/business/report/csr-spends-and-the-menace-of-ghost-beneficiaries/20191216.htm>> last visited 25 October 2021.

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prerequisites for a healthy corporate social responsibility score. A well-balanced internal management will help in mitigating the fraud risks involved in CSR activities. It is imperative for organizations to infuse the essence of CSR in its corporate governance standards. Taking care of sustainable investment strategies come well within the ambit of a director's responsibilities towards the stakeholders as well as the organization as a whole. The director owes a duty of care towards those sustainable investment opportunities that might reap both financial and social benefits for the corporation in the long term.<sup>19</sup>

For example, Google.org, which is a profit arm of Google INC, has managed to achieve both its financial as well as social goals via sustainable entrepreneurship. It invested millions of dollars in producing renewable energy at a profit of thermal energy sources.<sup>20</sup>

Ford Motor Company has increased its usage of renewable materials in the vehicles they manufacture. They have managed to reduce the global waste by 5.5% and 14.8% reduction in water usage while generating considerable profits.<sup>21</sup>

Taking charge of the CSR activities is not the sole duty of the CSR committee. The board of directors should take the philanthropic model earnestly and not with the sole purpose of complying with the mandate. The problem lies in the perspective of the corporations that carry out CSR activities for the sake of it. It should be looked at as an essential component of a corporation's management and corporate strategy. The amount spent on the philanthropic pursuit can mirror an organisation's profitability and financial performance.

## 2.2 DEDICATED MANAGEMENT TEAM

The Companies Act, 2013 directs every company to constitute a CSR committee but most of the companies do not take that seriously. A dedicated full-fledged team for monitoring CSR activities will definitely contribute to mitigating the high risk of frauds that come off as a consequence of passing the duty to any third party. The CSR team can even devise right strategies for the initiatives while hitting the profit target, minus the risks. Similarly, they can draft a due diligence policy for the organization before investing their money in the CSR programs so as to steer clear of ghost beneficiaries. A thorough background check should be the prerequisite before entrusting third parties with CSR programs. That will ensure transparency and authenticity of the agency. The policy will help in making sure

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<sup>19</sup>SUSTAINABILITY MATTERS WHY AND HOW CORPORATE BOARDS SHOULD BECOME INVOLVED <<http://ssrn.com/abstract=2032230>> last visited 27 October 2021.

<sup>20</sup> See n 10

<sup>21</sup>WHAT IS SUSTAINABILITY IN BUSINESS? (+10 BRAND EXAMPLES)

<<https://learn.g2.com/sustainability-in-business>> last visited 27 October 2021.

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whether the allocated funds have reached and are being utilized by the intended party.

According to a survey conducted by EY Forensic & Integrity Services with various CSR executives across the nation, 65% respondents did not have a defined due diligence policy for CSR implementation partners, 75% respondents did not have a governance structure or policy to address ethical lapses or fraud in CSR programs, 20% respondents said investigating a CSR fraud was a key challenge.<sup>22</sup>

These issues act as a roadblock in achieving the perfect CSR score while catering to the profits of the organization. It undermines the long-term value it can deliver to the stakeholders.

### 2.3 SHAREHOLDER ACTIVISM

Shareholder activism is crawling its way up in India. It refers to the attempts of shareholders who exercise their rights to bring about a desired change in the management or operations of the company. It can influence the governance, profit distribution, raise environmental concerns and what not. The Companies Act and Securities and Exchange Board of India (SEBI) have given significant rights to the shareholders of a listed company. Sometimes, shareholders pull distasteful tactics to put pressure on the board of directors to have them meet their demands forcefully.

Such a power can be put to a better and greater use. They can demand to know about the CSR programs launched by the organization or give inputs as to how the funds should be spent. Their active participation will make the company cautious about their CSR programs and mindful of misutilising these funds. After all the shareholders have invested their money and have every right to receive information and question where the funds are being directed at. Involvement and inputs of the shareholders should be regarded as much as their approval. Shareholder activism will escalate the organisation's accountability towards the CSR funds. It can make a positive difference in the ongoing fraudulent trends.

For example,

Carl Icahn, founder of Icahn & Co, is one of the notable shareholder activists who founded Icahn Enterprises in 1987 as a diversified holding company that attempts to increase shareholder value by influencing management decisions or acquiring a controlling interest in

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<sup>22</sup>WEAK GOVERNANCE AND LACK OF DUE DILIGENCE POSE A GRAVE RISK TO CSR PROGRAMS: EY SURVEY <[https://www.ey.com/en\\_in/news/2020/05/weak-governance-and-lack-of-due-diligence-pose-a-grave-risk-to-csr-programs](https://www.ey.com/en_in/news/2020/05/weak-governance-and-lack-of-due-diligence-pose-a-grave-risk-to-csr-programs)> last visited 27 October 2021.

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target companies.<sup>23</sup>

Bill Ackman, CEO of Pershing Square Capital Management, started a proxy campaign against Canadian Pacific Railway demanding to change the administration of the organization. His hedge funds acquired a 12.2% stake in the Canadian Pacific, which later expanded to 14.2%. which ultimately made him the biggest investor, giving him huge impact over the organization's board of directors. With this power he was able to replace the management team with a more efficient one, which aided in double the share price of the company, increasing shareholder value.<sup>24</sup>

#### **2.4 CHANGE IN PERSPECTIVE**

One of the major obstacles in the CSR programs is the perspective of the organization. They look at it as merely a compliance whose failure will cost them a huge penalty. It is always about the money and never about actually giving back to the society and environment. Half the job will be done if companies start viewing CSR beyond the mandate. It carries a positive social value and conscious efforts should be made to earn the points of social value. CSR aims to promote ethically oriented practice and yet while running after fetching these social points, companies often leave behind the moral values.

Philanthropic activities are supposed to be voluntary, anything else just defeats its purpose. Making something as pious as this mandatory via statute is prehensible enough, let alone its exploitation. The scenario constructed around CSR speaks volumes about the outlook of organisations. Its high time that companies must swap their cost cutting and profit driven perspective with social accountability.

They can organize CSR programs which involve their employees and some team activities. That way, it will be a great bonding activity and opportunity for the management to get to know everybody working in their organization better. Another angle to look at this responsibility is to consider the fact that a company's contribution can also reduce the burden of the government by helping the underprivileged people. Instead of expecting everything from the people in power, the organisations can play their part by extending a helping hand to those who cannot help themselves.

Until and unless the organisations realize the true motive and purpose behind corporate

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<sup>23</sup>SHAREHOLDER ACTIVIST - OVERVIEW, HOW IT WORKS, NOTABLE EXAMPLES

<<https://corporatefinanceinstitute.com/resources/knowledge/finance/shareholder-activist/>> last visited 27 October 2021.

<sup>24</sup> See 14

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social responsibility, the scenario will remain chaotic. This realization might make a shift in their outlook and that will for sure mitigate the fraud risks meanwhile complying with the legal mandate.

## CONCLUSION

Corporate social responsibility has gathered attention globally as a step towards practicing good citizenship by encouraging and promoting sustainable development. It became a global trend, but India prefers hard laws and organizations did not contribute as much before the mandate came into play. Organisations pay more attention at compliances instead of devising effective measures.

Companies have become reluctant towards sharing their profits for the society's good or contributing for an environmental cause. It is even exploited as a market gimmick and often seen as an opportunity for publicizing their products and earning profits from this publicity stunt. If we look at the pattern closely, the misuse to CSR has been on the higher side of the scale since the government made it mandatory by dedicating a law. The scenario was much cleaner when companies carried out corporate social responsibilities voluntarily.

In order to deliver social responsibility, a company should have a sound internal corporate governance first. It will reward them with extra points for credibility and trustworthiness. A weak governance will pave its way out to even poor CSR programs and decreased operationality. For a successful business, it must have a sturdy internal governance to manage and direct all the divisions. Shareholder's activism might help the situation too. They must monitor where the funds are being spent and what is done with the unspent amount.

These suggestions, if implemented seriously, can aid in bringing down the risks and frauds involved in corporate social responsibility.