INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

Amendment Rules For (CSR Policy), 2021 – A Dichotomy in Implementation and Further Challenges

MANSI JOSHI[1]

ABSTRACT

CSR has developed through different phases globally, and it has been associated with multiple terminologies such as "corporate philanthropy," "corporate ethics," "corporate social performance," "corporate accountability and sustainability," "triple bottom line," and various others, but CSR has always been at the center of all of these approaches. The Ministry of Corporate Affairs enacted the Firms Act, which mandated CSR and made it mandatory for companies to conduct programmes that aided social and environmental welfare activities. This was the largest experiment in the history of CSR.

This paper Juxtaposes the evolution of CSR from voluntary to compulsory subject, as well as its provisions related to the Companies Act and the impact on initiatives undertaken. Regarding the current COVID-19 pandemic, certain relaxations and other amendments were made through the CSR Amendment Rules, 2021 to encourage corporations to fulfil their CSR activities. Simultaneously, we will examine the future dimensions of this concept, as well as the growing government intervention in motivating and promoting companies to do so, as well as the new amendment's challenges and hurdles.

Keywords: Corporate Social Responsibility (CSR), Ministry of Corporate Affairs (MCA), Companies Act 2013, mandatory, voluntary

I. INTRODUCTION

The introduction of CSR regulations in some countries has sparked debate. Shareholder primacy models of corporate governance, which take priority of the shareholders' interests, criticize CSR legislation, claiming that any changes to this principle could endanger the interests of the business entity. If money is being accumulated for purposes of business, that money, which belongs to shareholders, shouldn’t be utilized in any other aspects other than providing that money back to shareholders. In the meantime, supporters of the shareholders theory, which our country has adopted, applaud this new CSR legislative endeavor, claiming

[1] Author is an LLM Student at Jindal Global Law School, India.

 [ISSN 2581-5369]

that increased inequality, extreme poverty, climate change, hunger, and other issues have left the national government with no choice but to make CSR mandatory. Although many scholars, individuals, practitioners would believe that increased inequality, utmost poverty, climate change, hunger and the fact that CSR is made mandatory to this interest are not the thing that the company should be burdened with. Then again, a few researchers contend that if an organization is organized in a manner that sustains income imbalance, or in case the organization's exercises contaminate the climate, causing environmental change and if an organization is a reason for different types of poverty structures in the society, why shouldn't an organization likewise be a piece of the arrangement? Specifically in US, the fact that CSR should be made mandatory or not itself is a question where different alchemic viewpoints are provided. Four chronological thinking approaches can be used to examine the evolution of CSR in India[2]

1. *Ethical Model* (1930–1950) – Based on "trusteeship," businesses manage their entities as if they were a trust invested in the welfare of the community.

2. *Statist Model* (1950–1970) – CSR was determined by state or legal requirements in this model.

3. *Liberal Model* (1970s – 1990s) – CSR is limited to the business's economic bottom line, so the company only needs to follow the law and can generate wealth and achieve social ends through taxation and charitable giving.

4. *Stakeholder Model* (1990s – Present) – As a result of the realization that businesses must play societal roles. The company is expected to operate in accordance with the "triple bottom line," with a focus on transparency and accountability.

CSR journey in India started with issue of Voluntary Guidelines on CSR, 2009 by Ministry of Corporate Affairs (MCA). The Guidelines were revised as National voluntary guidelines on social, environmental and economic responsibilities,2011. In 2012, August SEBI mandated inclusion of Business Responsibility Reports as apert of annual report for top 100 listed entities based on market capitalization at the National Stock Exchange (NSE) and Bombay Stock Exchange. Statutory provisions[3] relating to it are enshrined in Section 135 of the Companies

---

[22] Dash M.K. & Kabra G., *Handbook on Corporate Social Responsibility in India: An Econometric Study,* Confederation of Indian Industry, Issue 7, 59-70 (2013) http://eprints.staffs.ac.uk/2394/1/Ivanovic_PhD%20thesis.pdf, last accessed on 4 May, 2021.

[3] CSR Box & NGO Box, India CSR Report: Fib years and INR 100,000 Crore, International Journal of Management & Business Studies. Vol. 1, Issue 3, 47-53 (2019) http://www.ijmbs.com/13/bhawani.pdf, Last accessed on October 31st, 2021

Act, 2013, which requires any company that meets the following criteria to engage in mandatory CSR –

• A net worth of at least Rs. 500 crores

• An annual revenue of Rs. 1000 crores or more

• Companies with a net profit of Rs. 5 crores or more in the previous fiscal year must spend 2% of their three-year average profit on CSR.

In addition to spending the above-mentioned 2% on CSR, they are also required to form a CSR Committee as part of their board and draught a CSR policy while keeping an eye on internal controls.

(A) Review of literature:

UK Essays, 2018[4] states that According to the main issue that arose in Mauritius when CSR was being regulated was how to regulate it. Is it a social, ethical, or legal standard? Should it be regulated as a voluntary or mandatory requirement for companies? Whether this duty of looking after society is the responsibility of the private sector or the government is debatable, as all businesses pay taxes and their ultimate goal is profit maximization. It also takes a different approach to the focus of organizations – profit maximization versus social responsibility.

According to *Dharmapala and Khanna (2018)*[5], companies initially spending less than 2% on CSR increased their spending, whereas large companies spending more than 2% reduced their spending after Section 135 went into effect.

In Sundar, 2018,[6] with regards to CSR it was indicated that if the underlying goal was to instil business responsibility towards all stakeholders, then the current legislation is failing. As the government has associated social responsibility with monetary contributions, it is almost as if paying guilt money and being absolved of all charges.

The Importance of CSR:

CSR is critical for both the organization and its stakeholders. Companies can fill the void left by the absorption of business benefits by actively participating in the community through CSR.

[4] Poongavanam S., Uncluttering the spreading – CSR initiative, Asian Journal Management Research, Vol. 2, Issue-1, 22-24 (2019)

[5] Dharampala D. and Khanna V., *The impact of mandated CSR: Evidence from India's Companies Act, 2013*, International Review of Law and Economics, Vol. 11, No. 7, 5218-5224 (2019).

[6] Sundar P., *What has CSR really achieved?* International Journal for Business and Management Tomorrow, Vol.2, No. 4, 127-130 (2014).

As a result, implementing and enforcing CSR obligations has become a top priority for our country and the rest of the world. The increased inequality, extreme poverty, hunger, climate change etc. does not leave an option in front of national government to question the importance of CSR. The increase in the number of CSR frauds in both the public sector as well as the private ones has grown at an alarming rate allowing businesses to evade their obligations towards the society and still enjoy certain benefits that the government provides such entities for their compliance. Proper implementation of CSR not only will boost the growth of the economy but also contribute to social development. The study would analyze the impact of the implementation of CSR Amendment Rules, 2021 in light of the same.

II. Critical analyses

ANALYSIS OF CSR POLICY (AMENDMENT) RULE, 2021

1. **Identification of key amendments -**

On 22.01.2021, the MCA notified the Companies (CSR) Amendment Rules, 2021[7], which encompassed the below stated amendments mainly with regard to the new provisions of implementation and the framework for enforcing CSR mandate.

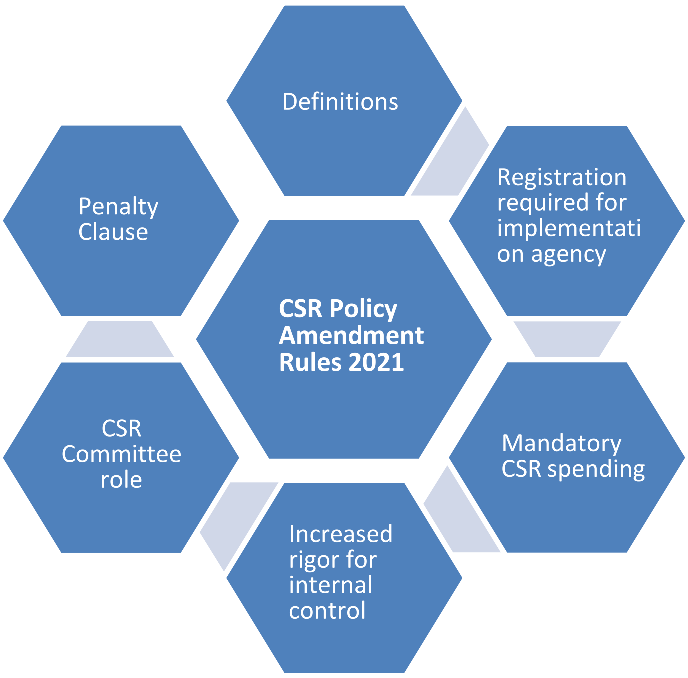


Fig 1. Main amendments to the CSR Rules, 2021

2. **Activities falling within the preview of schedule VII -**

[7] MCA, GOI (22 Jan, 2021), General Circular No. CSR-05/1/2021-CSR-MCA.

When we talk about "multi-year projects" and "ongoing projects" in this context, we mean projects undertaken by the company to fulfil their CSR obligation, with a timeline of no more than three years excluding the fiscal year in which the project was undertaken.

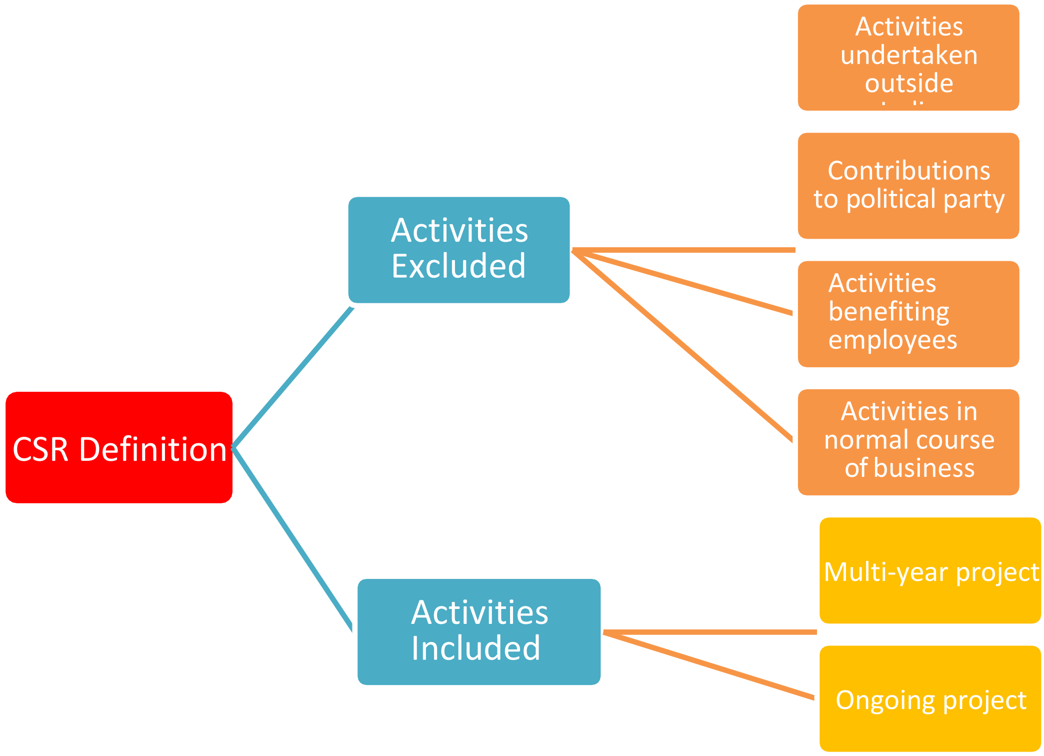


Fig 2 - Activities falling within Schedule VII of Companies Act, 2013

3. New Implementation Agency Restrictions and Compliance Requirements –

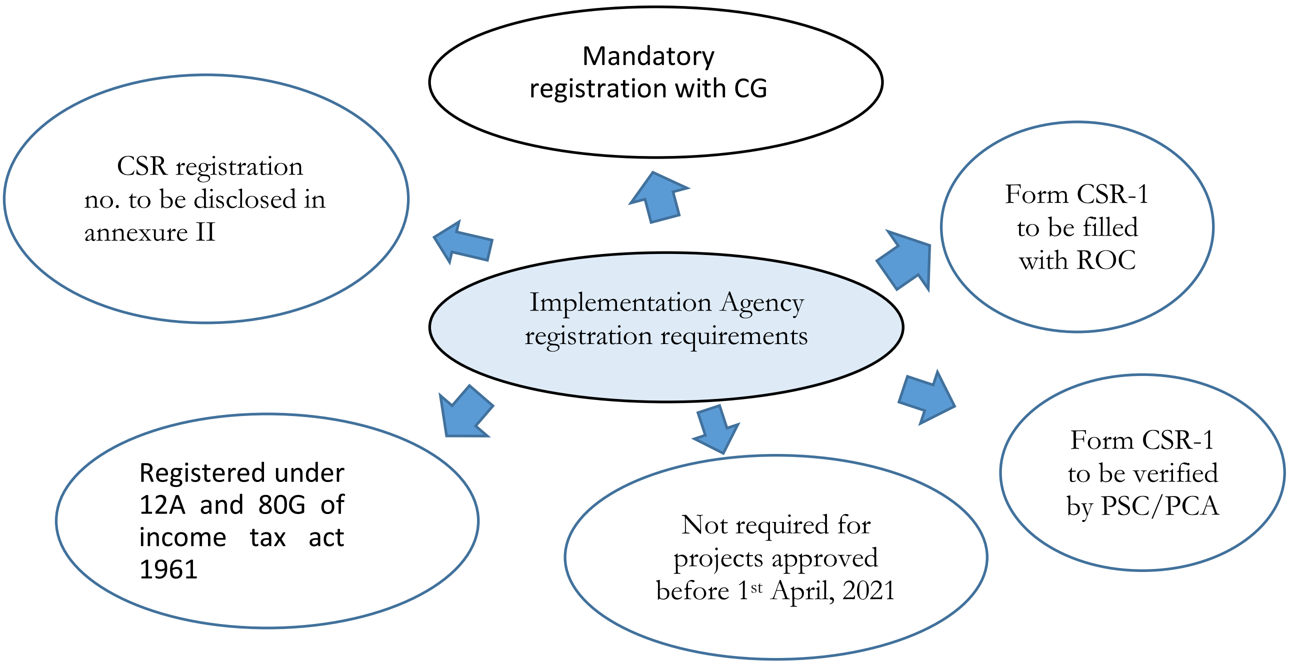


Fig 3 – Compliances to be adhered to by Implementation agencies

4. **Increased Rigor on Internal Controls –**

- The board must ensure that the CSR fund is only used for the purposes approved by the board;
- The CSR fund utilization must be certified by the CFO or any other person responsible for its financial management; and
- The board must monitor project implementation within specified timelines
- Excess CSR spending must be carried forward and set-off against the following fiscal year.
- Unspent CSR funds must be transferred to the "Unspent CSR Account/ Schedule VII funds."
- Separate disclosures must be filed for "ongoing and other ongoing projects," as well as details of the capital assets created under CSR.

5. **CSR Committee role -**

This committee must formulate and recommend an “Annual Action Plan”, which must include the following –

1. List of the CSR that could be undertaken as specified in Schedule VI
2. The manner of execution of such project
3. Modes of utilization of the funds and implementation schedule
4. Put in place a monitoring and reporting mechanism to keep a check
5. Details of need and impact assessment

6. **Penalty Clause –**

If the company is found to be in default, it must transfer twice the amount required to be transferred to the fund specified in Schedule VII, or Rs. 1 crore, whichever is less. In the event of a breach of the foregoing, each officer found to be in breach must pay 1/10th of the amount that had to be transferred to the Schedule VII fund, or Rs. 2 lacs, whichever is less.

Penalty if the company fails to –

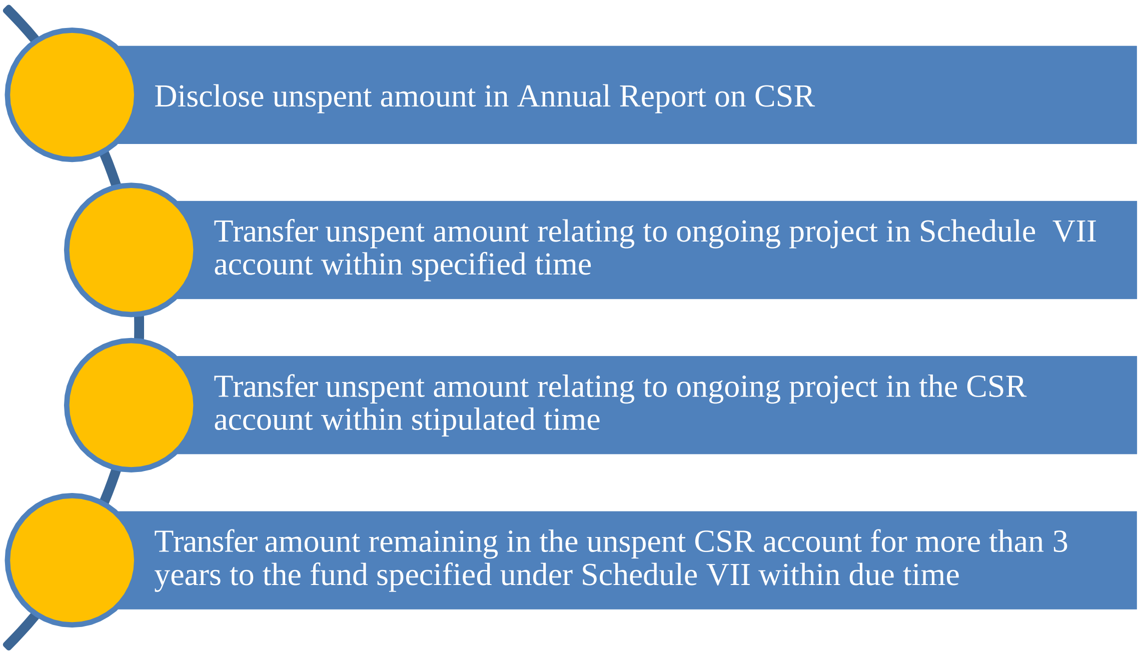


Fig 5 – Situations in which penalty clause would become applicable

COMPERATIVE ANALYSIS OD CSR RULES AMENDMENT OF 2019 & 2021

Particular	2019 Amendment	2021 Amendment
Ongoing Project	Not defined	Project not exceeding 3 years excluding the year in which undertaken.
Mandatory Registration of Implementation Agency	Not required	Mandatory registration with govt. and generation of Unique Registration Number.
Carry forward and set-off	Earlier not allowed	Allows carry forward and set-off against immediate 3 FYs.

 [ISSN 2581-5369]

Mandatory transfer of unspent CSR amount	Not required to be transferred to any fund	Has to be transferred to the Schedule VII funds
Responsibility of Board and CFO	Not highlighted	Specifically lays down their role and duties with regard to implementation of CSR obligation
Penalty Clause	No penalty for non- compliance	Specific penalties highlighted for the Company as well as individuals found to be in breach of obligations.
Website disclosure	Only disclosure of contents of CSR policy on its website.	New disclosures include – CSR Committee composition, approved projects and CSR Policy.

FACTS AND FIGURES – DATA ANALYSIS THROUGH DESCRIPTIVE STATISTICS

A. Impact of Mandatory CSR Obligations –

Five years of making CSR mandatory[8] under Section 135 of Companies Act, 2013 (2014 – 2019) has seen the following key milestones –

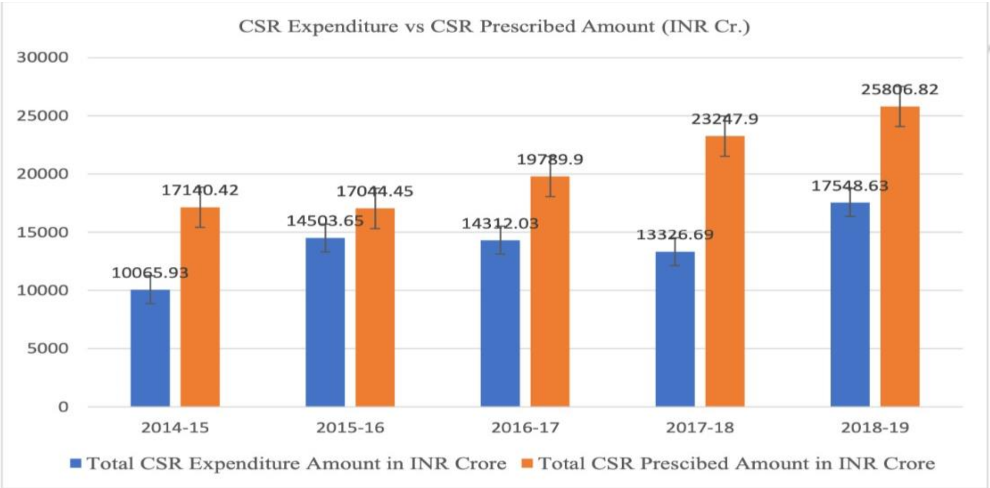
- More compliance with the requirements of Companies Act, 2013
- 325% increase in companies disclosing CSR details in annual report
- 30% companies conducted more than 3 CSR meetings
- 76% of the companies spent more than 2% on CSR
- 41% aligned their projects with SDGs in annual reports
- Rs. 35077 crores cumulatively spent by the top 100 companies
- 220% increase in expenditure towards Schedule VII

[8] Patidar S. and Kataria A., *CSR in India: Challenges and Prospects*, Bauddhik, Vol. 3 (1), 54-69 (2012).

- 75% projects implemented with the aid of partnership demonstrations
- 18% now have CSR foundations

B. Gap between the prescribed and actual CSR Fund spent[9]

Prescribed amount reached Rs. 1,00,000 Cr. | Actual CSR amount spent was Rs. 69,800 Cr.



Source: Report of the High-Level Committee on CSR, 2018, MCA, Govt. of India (For FY14-15 to FY17-18) (CSR BOX & NGO BOX, 2019)
Note:
For FY 2018-19
• The total prescribed amount is projected based on the average y-o-y growth % for FY 2014-15 to FY 2017-18
• The total CSR expenditure is projected based on the Average % Compliance for FY 2014-15 to FY 2018-19.

Fig 6 – CSR Expenditure vs. Prescribed CSR

(C) Narrow scope of CSR activities due to being limited to the prescription of Schedule VII of the Companies Act –

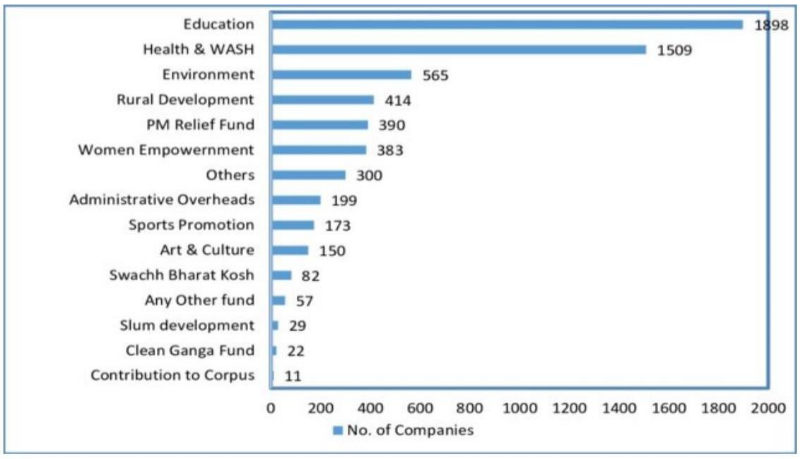


Fig 8 & 9 – Different causes in which CSR expenditure is being

[9] Pandey V.K. and Kaur H., *CSR – Towards a sustainable future*, Asian Journal of Research in Banking and Finance, Vol. 2, Issue 5, 64-73 (2017).

utilized in

(D) No. of Company Follow CSR Mandate[10] -

CSR SPENT	NO. OF COMPANIES	PERCENTAGE
More than Prescribed CSR	1110	15
Exactly as Prescribed	548	8
Less than Prescribed	1481	20
Zero CSR Expenditure	4195	57
Total	**7334**	**100**

Source: Indian Institute of Corporate Affairs, 2016

Fig 7 - Percentage of companies below and above the 2% mandate curve

Considering the statistics above, we can see that the CSR mandate is already proving difficult to implement in a country like India. Because there is a significant difference between the prescribed amount and the actual CSR funds spent, imposing additional restrictions in the form of the new amendment would further reduce CSR spending and have a contradictory effect. As a result, in the following sections, I've highlighted the challenges of such an amendment, as well as a few proposed solutions.

III. IMPLIMENTATION HURDELS IN RECENY AMENDMENTS

1. Implementation Agencies –

According to the recent amendment, only companies registered under Section 8 of the Companies Act and other entities established by the Parliament or state legislature can engage in CSR activities. In contrast, the High-Level Committee's Report stated that in FY 2017-18, these non-company-established agencies carried out 29% of the prescribed CSR activities[11]. The goal of having such agencies was to ensure that businesses of all sizes could meet their obligations. However, this bar has been imposed to protect against CSR scams that occur, but completely prohibiting them is not a long-term solution. Rather, the Board must exercise due diligence, and these agencies must comply.

[10] Gupta N. and Kesari, M., *CSR in the information and communication technologies sector – A discourse*, International Journal of Engineering Technology, Management and Applied Sciences, Vol. 4, Issue. 9, 174-180 (2016).

[11] Thiagarajan S., Ayyappan A and Ramachandran, *CSR- Amendment Act, 2019 and its impact in India*, European Journal of Economics, Finance and Administrative Sciences, Issue 34, 243-246 (2011).

These implementation agencies are not completely unregulated; they must adhere to the restrictions imposed by the Societies Registration Act of 1860 and state-specific legislation, such as the Maharashtra Public Trusts Act of 1950. In addition, they should have a three-year track record of working on the required project.

2. Lack of community Participation –

This is on the grounds that there is next to zero information about these initiatives, and no endeavors have been made to bring issues to light and acquire their trust. Doubt emerges basically because of miscommunication at the grassroots level between the organization and local people.

3. Need to strengthen local capacities –

There is a need to extend the quantity of local NGOs on the ground in light of the fact that there is a shortage of such experienced and proficient associations, which compromises and restricts the increase of CSR exercises. These NGOs are liable for distinguishing the local area's actual necessities and guaranteeing their successful implementation.

4. Limited perception of CSR activities –

NGOs ordinarily have a limited viewpoint on CSR exercises, characterizing it as contributor-driven rather than adopting a local approach. CSR ought to be embraced dependent on expert information, and the organization's specialization ought to be better used. As indicated by the new standards, activities done in the ordinary course of business don't qualify as CSR, however, these are really ideal on the grounds that the organizations as of now have the assets and mastery to help without duplication of resources, permitting them to offer back more.

5. Uncontrolled internal control –

The CSR Committee is given a significant role under the new rules. Such concentration of power may result in excessive bureaucracy and red-tapism, and each project may take an inordinate amount of time to be approved and then implemented. Concerning the implementation of CSR issues, there is a lack of agreement among the committee members. This shortcoming may result in project duplication and a reduction in their impact assessment skills.

IV. CSR: INDIA AND USA

CSR practices are subjective and vary from one country to another, just as among organizations, and are focused on a wide scope of causes ranging from educational programs to research institutes. CSR isn't commanded by the government in the United States, yet there is an overseeing body in the Bureau of Economics and Business Affairs to encourage offering in return.[12] most of CSR activities there are driven by tax reductions for charity and shopper strain for moral brands. Such a broad definition enables businesses to create synergies between their core business and their philanthropic efforts that are aligned with their area of expertise.

This definition is narrower in scope in India, focusing primarily on assisting the underprivileged, thus combining traditional philanthropy with careful strategy. The most significant differences between India's CSR approach are as follows:

1. The Indian government mandates it.
2. It is regarded as a method of mitigating the negative impact of businesses on the local community.
3. It clearly distinguishes between business activities and CSR obligations. Such a distinction suffocates the potential of CSR when it is intertwined with the company internally.

In India, business achievement and social prosperity are viewed as entirely went against, while in the United States, they are viewed as helpful together. Interweaving CSR with organization mastery would permit them to utilize their previous assets and modern information instead of beginning from scratch, allocating more prominent viability to CSR attempted by organizations with a more noteworthy stake in the ventures.

V. CSR INITATIVE ADMIST COVID-19

In light of the novel coronavirus, which has been labelled a "global pandemic," the spending of funds for virus mitigation has been included within the scope of SCR activities[13]. The following questions were posed in the notification dated July 24, 2020.

- A company which even in its normal course of business does R&D activity with regard to the vaccine, drugs and medical devices in relation to the virus can now qualify as CSR activities. Subject to the condition that –
    1. It has to be carried out in collaboration with approved institutes and organizations
    2. Details of these activities need to be disclosed in the Annual Report on CSR
- Make contributions to such R&D projects funded by the Central/ State

[12] Gandhi R., *Corporate Social Responsibility in USA Management Essay*, Indian Institute of Corporate Affairs, Vol. 1, 1-14 (2016).

[13] Khosla R. and Kumar V., *Implementation and Impact of CSR Policy in India during Covid*, International Education and Research Journal, Vol. 3, Issue. 5, 244-247 (2020).

Governments or PSUs of Central/State Governments.

- As well as autonomous Bodies established by the Department of Pharmaceuticals and Ministry of AYUSH.

VI. CSR FINDINGS AND NEW DIMENSSIONS

1. *Applicability of CSR* - Extend the scope of these provisions to include Limited Liability Partnerships, banks registered under the Banking Regulations Act of 1949, and other similar entities. This would raise the prescribed CSR amount from Rs. 900 to Rs. 1200 crores.

2. C*onstitution of CSR committee* - – Exempting small companies with prescribed CSR of less than 50 lakhs from forming such committees would help ease out the operational costs therein.

3. *Schedule VII funds and alignment with the Sustainable Development Goals (SDGs)* – This will aid in social inclusion, and the cessation of contributions to government funds will encourage companies to partner with local NGOs on social development projects.

4. *Random audit of company's CSR work* – Such third-party assessments of only 5% of companies' CSR projects will help sensitize both the company and its management, making them more engaged in its planning and execution.

5. *Fund transfers to implementing agencies' accounts do not constitute CSR* spending – The transaction-based approach to CSR must be abandoned because fund transfers to implementing agencies' accounts do not constitute CSR spending. The actual amount spent on the project must occur in the same fiscal year, allowing for a more programmatic approach.

6. *CSR Reporting* – The Company's CSR efforts are monitored and regulated by a disclosure-based regime. There is a need to incorporate more holistic reporting and data capture in machine readable formats, which allows for technology-based assessments and seamless data dissemination.

7. *Expanding CSR impact* – Companies with a prescribed CSR of more than Rs. 5 crores must conduct impact assessments to identify need-based impactful projects.

VII. CONCLUSION

Although mandatory CSR in India was a controversial move, it has yielded positive results. However, due to our country's varying diversity and development levels, CSR cannot be a one-size-fits-all case; thus, there is a need for such a strategy that will expand opportunities for balanced development. Currently, India spends approximately Rs.15,000 crores on CSR

 [ISSN 2581-5369]

projects, which is insufficient given the magnitude of the challenges we face. The difference between the prescribed and actual CSR spent is Rs.30,000 crores, and the reasons for this need to be investigated, as well as a strict enforcement agency, due to the variety of problems and available resources. We already see a significant difference in the implementation of CSR, so the 2021 amendments would simply make it more difficult. Instead of focusing on the 2% tax break, CSR should focus on doing good. Furthermore, tax exemptions under 80G should be available to all activities, not just those listed in Schedule VII.

*****