A STUDY ON THE ROLE OF DIRECTORS IN THE REALM OF CORPORATE SOCIAL RESPONSIBILITY TO ENSURE SOCIETY'S SUSTAINABILITY – AN ANALYSIS OF COMPANIES ACT, 2013 – AN INDIAN PERSPECTIVE

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ABSTRACT

The author in this paper discussed about the importance of corporate social responsibility which has been made mandatory in Companies Act 2013. She also throws light on Seventh Scheduled of the Act on corporate social responsibility to perform activities mentioned under the schedule which will lead to society's sustainability. According to Companies Act in India, a company is a legal entity and it is represented by board of directors and it is the responsibility of the director to implement the provisions of the companies Act 2013. The amendments made to Companies Act in 2013 specifically directs the companies to constitute a CSR committee consisting of Directors and Independent directors of the Company which is responsible for implementation of the CSR and Sustainability Development initiatives. The amendments made to the Act in 2013 extended these provisions to all companies both public and private, listed and non-listed. Till September 2018, as per the law companies which are having a turnover of 1,000 crores or net profit of 5,000 crores consecutively for last three years are only covered under this legislation but on 19th September, 2018 the act is amended and this clause of turnover net profit has been taken out thus any company registered under company law irrespective of the turnover and average net profits come under the purview of this legislation Hence, this paper becomes more important to understand the latest amendments of Companies Act with reference to Corporate Social Responsibility and Sustainability Development policy framing and its implementation.

Keywords: Companies Act, 2013, Directors Responsibility, Schedule VII of Companies Act, Corporate Social Responsibility, CSR Committee

INTRODUCTION

The concept of Corporate Social Responsibility was originated in 1950's in USA and it came into prominence in public debate during the 1960s and 1970s. US had lots of pressing social problems like poverty, unemployment rate, urban blight and pollution. In the Western countries, in recent times, events such as consumer boycotts, direct action, shareholder agitations, ethical shopping guides, ethical product labeling schemes, media campaigns and ethical competitors became increasingly effective in changing corporate perspectives. Corporate social responsibility became a matter of utmost importance from diverse groups demanding change in the business.

During 1980s to 2000, corporations generally recognized their accountability to society and tried to fight against the competition in a rapidly changing global economy. The concept of corporate social responsibility has come to mean that the responsibility of a corporate to the society is an inalienable part of its operations and strategy. Corporate Social Responsibility is about how companies manage the business process to produce an overall positive impact on the society. Companies need to answer two questions relating to their operations:

(a) The quality of their management – both in terms of people and processes (inner circle)

(b) The nature and quality of their impact on society in various areas.

Social responsibility is the deliberate effort of a firm to increase its positive impact on society while reducing its negative impact. In the light of many publicized instances of corruption and as also of illegal behavior, the public, social interest groups and consumers are making increasing demands that business firms demonstrate social responsibility. Firms have a responsibility to promote information to the investors and to act prudently in managing funds as well as to compensate executives properly. Recent problems including the mishandling of investor's funds, insider trading, and excessive compensation for executives, has contributed to a loss of money and trust on the part of the investors.

Firms can advance social responsibility in many ways, such as supporting programs to improve communities where they are located. Many of the firms and industries participate in self-regulation to encourage good business practices. Others review their performance of social responsibility activities through periodic social audits. Socially responsible business people behave in an ethical manner. The business environment, the organization and an individual's own moral philosophy influence ethical and unethical behavior. Firms can encourage ethical behavior through education and by developing and enforcing codes of ethics.

Objectives of the Study

1. To study whether the fast-industrial growth is achieving the society growth.
2. To study whether companies contributing to inclusive growth.
3. To study whether the companies are spending 2% of profits money for corporate social responsibility which is mandatory under Companies Act, 2013.
4. To study the policy and implementation of CSR of the companies in line with activities mentioned in VII Schedule.

LITERATURE REVIEW

To the World Business Council of Sustainable development, 'Corporate Social Responsibility' is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large. It was felt that “corporate managements have a leadership role to play in industrial society and therefore have great responsibilities to their own profession, to the enterprise, to the workers they manage, to their economy and to the larger society” (Drucker, 1946).

There is definite continuum based on the different stages of performance of CSR by business firms. There was agency theory which believed that “the prime responsibility of Corporate is to take care of its shareholders (Friedman, 1970)”. At every stage or phase of this continuum, there is an inner urge on the part of the firm to remain ethical as far as possible. Thus, we have the following stages of the continuum of CSR (Carroll, 1991). One more supporting view on this theory says that the relations between corporate and its stakeholders will decide the future financial performance of the company (Barnett, 2007).

Ethical Responsibility ⇨ Legal Responsibility ⇨ Economic Responsibility ⇨ Communitarian Responsibility ⇨ Humanitarian Responsibility

Ethical Responsibility

Every company has a special continuing responsibility towards the people of the area in which it is located and in which its employees and their families live. In every city, town or village, large or small, there is always a need for improvement, for help, for relief, for leadership and for guidance. “I suggest that the most significant contribution the organized industry can make is by identifying itself with the life and the problems of the people of the community to which it belongs and by applying its resources, skills and talents to the extent that it can reasonably spare them to serve and to help them” in an oration delivered by Dr. Jamshed Jiji Irani, Eminent Industrialist and Former MD, Tata Steel.

Legal Responsibility

All the corporate has the responsibility to adhere to the laws passed by the parliament. Every firm needs to obey the government rules and regulations relating to their business activities.

Economic Responsibility

To maximize net profits so that it can pay reasonably well to provide returns on the investment, to pay the shareholders and other investors. This is an essential social responsibility.

Communitarian Responsibility

It is the concept of positive rights, which are rights or guarantees to certain things. These may include state subsidized education, state subsidized housing, a safe and clean environment, universal health care, and even the right to a job with the concomitant obligation of the government or individuals to provide one. To this end, communitarians generally support social security programs, public works programs, and laws limiting such things as pollution.

Humanitarian Responsibility

UNESCO in 1997 has announced Universal Declaration of Human Responsibilities and the articles say:

Article 1: Every human being, regardless of social origin, sex, property, color, language, nationality or religion, ought to be treated humanely.

Article 2: All human beings should oppose all forms of inhumanity, especially fanaticism, hate, and social exclusion, and work for greater humaneness.

Article 3: No individual human or group of humans, including the state, social class, pressure group, police or military agency stands above the ethical dictates of good and evil. All should behave in a genuinely human fashion, that is: Do good and avoid evil.

Article 7: Although every human person is infinitely precious and must be unconditionally protected, the lives of animals and plants which inhabit this planet with us likewise deserve protection, preservation, and care. That is, we humans are a part of nature, not apart from nature. Hence, as beings with the capacity of foresight we bear a special responsibility - especially with a view to future generations - for the air, water, and soil, i.e., for the earth, and even the cosmos.

Article 9: No one has the right to rob or dispossess in any way any person, group of persons, or the commonweal. Every human being ought rather to deal honestly and fairly.

Article 10: Property, limited or large, carries with it an obligation; ownership not only permits the personal use of property but also entails the responsibility to serve the common good.

Another model of social responsibility has four crucial stages (Ackerman & Bauer, 1976). These four stages are project identification, project study, project implementation and project evaluation. After Friedman's approach became popular (business responsibility is to make profits) many authors have explored the relationship between CSR and financial performance. In some cases, it is found that Corporate social responsibility and financial performance are positively correlated and as such the Friedman's doctrine does not hold good (Baron, 2001).

In India many people are living Below the Poverty Line and there is uneven development in the country. Most of the children are under malnutrition and women are in a vulnerable position. The need of the hour for the government is to focus on these issues and to frame a law which will bring balanced growth in the society with the contribution from the corporate. Some companies like TATA, WIPRO and Infosys have reacted proactively and have contributed to the society. Governments as well as regulators have responded to this unrest and the National Voluntary Guidelines for Social, Environmental and Economic Responsibilities of Business or the NVGs (accompanied by the Business Responsibility Reports mandated by the SEBI for the top 100 companies) and the CSR clause within the Companies Act, (2013).

Legality of CSR:

State corporate statutes grant corporations legal powers like those of people and allow corporations to participate in lawful activities (Clark, 1986). The business judgment rule acts as a presumption in favor of corporate managers' actions (Branson, 2002). The Corporate Social Responsibility plans often have the nominal goal of taking a holistic management approach towards compliance with environmental and safety laws, contractual and voluntary environmental obligations management, Corporate social responsibility, business strategy and the environment and social impacts and risk, and other issues (Clark, 2005)

The Provisions of Corporate Social Responsibility under Companies Act, 2013

According to Section 135 of Companies Act 2013 insists that "any company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director" (The Companies Act, 2013). The Board of Directors of such company should reveal the composition of CSR committee. Such committee must formulate and recommend a CSR policy in which activities mentioned in 2014 guidelines should be included. It may also suggest the budget for such activities. It also has a special responsibility of monitoring the CSR policy of the company here and then.

The Board of Directors upon receiving such CSR policy from the committee must include the recommendations of the committee in its CSR policy and implement the activities suggested. The board should also disclose its CSR activities online and make it available to the public. The Board must ensure that at least 2% of the average profits of the company are spent on its CSR activities. The company has a choice to spend such CSR budget in its local area or to spread it in different parts of the country/globe. If the company is not able to spend 2% of its average profits in a financial year, the board must report the reasons for such failure in its report. All companies covered under this law must calculate the average net profits as per the rules given in Section 198 of the legislation.

Some of the specific provisions are given by the Act in Schedule VII of Companies Act 2013. Corporate Social Responsibility activities may include, wiping out hunger and poverty, spreading education, women empowerment and gender equality, reducing or if possible, eradicating completely child mortality, preventing spreading of communicable diseases, promoting environmental sustainability like reducing carbon emission levels, avoiding environmental pollution, etc. Other activities like sharpening youth's vocational skills, promoting social entrepreneurship, donating to Prime Minister's National Relief Fund or any other social and economic development related funds run by Central or State Governments may also be included in the list.

Some more details about constitution of CSR committee:

The committee should consist of at least three directors out of whom at least one should be an independent director. The functions of the board included as mentioned above:

a) framing of CSR policy of the company,

b) recommending the activities on which the CSR fund may be spent and

c) monitoring the spending of the fund as well as implementation of CSR policy from time to time.

These rules are discussed in the Clause 135 of Companies Act 2013.

The Government of India in the year 2014 framed certain CSR rules which came into force from 1st April 2014. According to these rules, the CSR provisions given in the Companies Act shall apply to Foreign Companies also which were exempted hitherto. What is a foreign company is clearly defined under clause (42) of section 2 of the Companies Act 2013? Any foreign company having its branch office or project office in India which comes under the criteria regarding turnover or net profit given under section 135 of the Company Law, is covered under these provisions.

There should be at least 3 or more directors as members of CSR Committee and one among them should be an independent director. In the case of Private Limited Companies which are having only two directors in their boards, an exemption has been given for this rule which means there can be two directors in the committee. The provision of appointing an independent director has been exempted for both private limited companies or unlisted companies. The foreign companies must nominate two directors for its CSR committee, out of which one should be a resident Indian who will receive and reply all communications from the Government and other stakeholders and the other one should be there to attend to the functions of the CSR committee along with the first person. The second person of the committee may be a foreign person.

Regarding the implementation of CSR activities, the rules made in 2014 have given different options for the company to choose. Either it may directly implement on its own, or through its own not for profit foundation set up for this purpose, or through independently registered not for profit foundation, or through collaborating with other companies. The scope of the CSR activities does not include the welfare activities provided for its employees or to their families.

Format of CSR Report

A format given under CSR rules 2014, for the board report on CSR includes, activity-wise details of CSR initiatives, reasons for non-spending of 2% of the average profits and a responsibility statement that the CSR policy, implementation and monitoring process follows the CSR objectives, in letter and in spirit. This document should be signed by Chairman or Chief Executive Officer or Managing Director or a Director of the board.

Disclosure of CSR Activities Made Compulsory

Many firms were voluntarily making donations and spending on community development and mitigation of environmental pollution. The firms have started allocating funds for CSR activities specifically from 2012. This was in response to the Securities and Exchange Board of India (SEBI) circular dated August 2012, which mandated all top 100 listed companies to include business responsibility report as a part of their annual report.

Amendments made to the Act in 2018

Ministry for Corporate Affairs bought amendments and notified it as 'Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018'. These rules came into force vide notification released on 19th September 2018. They came into force from the same date.

In rule 2 sub-rule (1) the word 'relating to activities" are replaced with "areas or subjects". In the same rule sub clause (ii) the words "cover subjects enumerated" are substituted with words "include activities, areas or subjects specified." In sub-rule (1), in clause (e), the words "company as", are substituted with the words "company in areas or subjects." In rule 5, in clause (i) of sub rule (1), the words "an unlisted public company or a private company" are substituted with the words "a company". In rule 6 (a) in sub-rule (1), in clause (a), the words "falling within the purview of" are replaced with the words "areas or subjects specified in". In rule 6 (b) In sub-rule (1), in second provision to clause (b), the words, "activities included in Schedule VII" are replaced with the words "areas or subjects specified in Schedule VII". In rule 7, for the words, "purview of", the words "areas or subjects, specified in" shall be substituted.

Hence, by and large all these amendments are meant for the replacement, addition or deletion of the definitions to expand or reduce the scope of the definition. The major modification is the definition of the company. The clause of minimum turnover, minimum average net profit has been removed. Any company irrespective of the size and nature registered under Companies Act (2013) will come under the purview of the definition and the legislation is applicable.

Penalty for violation of CSR provisions

As per the Section 134(3) (o) the board of directors must disclose all relevant information about its CSR policy and its implementation every year. If this rule is violated by any Board of Directors, such Board must pay a fine ranging from minimum Rupees fifty thousand to maximum Rupees two lakh fifty thousand. Apart from this every default officer must pay a fine of minimum INR Fifty Thousand to maximum of Rupees five lakhs. Apart from that he or she may be imprisoned for a period of 3 years or less than that. These fines are imposed only for non-disclosure of the CSR activities but not for non- implementation of Corporate Social responsibility activities.

Compliance scenario

The amendments were made almost 6 years back but the spending by the Corporate on its social responsibility activities is not very impressive. Till 2017, not even 20% of the companies which are covered under the law, have spent the minimum amount that is 2% of their average net profits. But the positive sign of these amendments is, the overall CSR spending has been increased.

In a report released by Corporate Governance Advisory Firm Institutional Investor Advisory Services India Limited (Iias), the total spending in 2014/15 is still 26% below the prescribed limit of 2% spending of the three-year average pre-tax profits of the company.

According to India Outlook Report (2017) Sector-wise Performance (Actual CSR Spend in %) and Actual CSR Spent to the Prescribed CSR (INR Cr) is referred in figure 1.

Figure 1: Sector-wise Performance (Actual CSR Spend in %) and Actual CSR Spent to the Prescribed CSR (INR Cr)

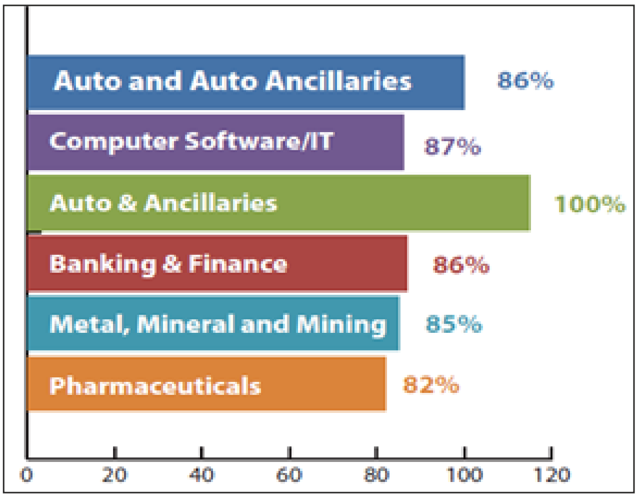


Table 1: Sector-wise Performance (Actual CSR Spend in %) and Actual CSR Spent to the Prescribed CSR (INR Cr)

S. No.	Company Name	Prescribed CSR (INR Cr.)	Actual CSR	% of actual to Prescribed CSR
1.	Auto and Auto Ancillaries	464	464	100%
2.	Computers (Software & Hardware)	1254	1091	87%
3.	Banking & Finance	1717	1474	86%
4.	Metal, Mineral & Mining	703	598	85%
5.	Pharmaceuticals	383	314	82%

Source: Primary Data

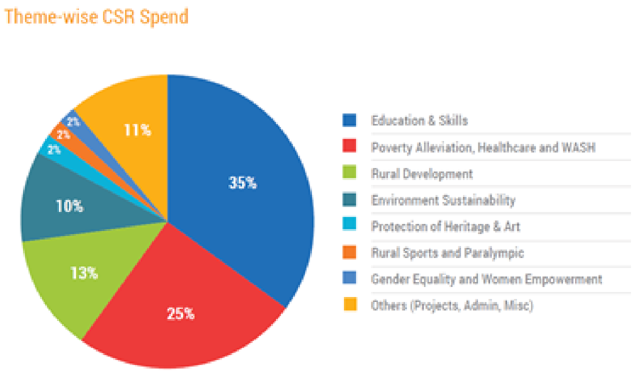
From the above we can observe from table 1 that Auto & Ancillaries sector are spending 100% prescribed CSR Amount. The next sector is Computer Software/IT with 87%, Banking & Finance with 86%, Metal, Mineral & Mining with 85% and Pharmaceuticals with 82%.

Table 2: Theme-wise Number of Projects

Thematic Area	INR Cr.	No. of Projects	% of actual to Prescribed CSR
1. Education & Skills	2973	1598	35%
2. Poverty Alleviation, Healthcare and Wash	2131	1260	25%
3. Rural Development	1091	433	13%
4. Environment Sustainability	795	433	10%
5. Protection of Heritage & Art	190	110	2%
6. Rural Sports and Paralympic	181	115	2%
7. Gender Equality and Women Empowerment	146	177	2%
8. Technology Incubation	45	11	-
9. Benefits to Armed Forces Veteran	32	17	-
10. Other (Projects, Admin, Misc.)	862	Not Applicable	11%

Source: Primary Data

Figure 2: Theme-wise Number of Projects



From the above table 2 it has been observed that the companies are spending CSR mostly in the areas like Education & Skills 35%, Poverty Alleviation, Healthcare and Wash 25%, and Rural Development 13%. The companies spending only 10% for Environment Sustainability.

National Green Tribunal Act, 2010: In 1992, India participated in United Nations Conference on Environment and Development held in Rio de Janerio which imposed a duty to provide a mechanism for effective access, redressal and remedy through judicial and administrative proceedings, advancing national laws and provisions for liability of defaulter. Consequently, National Environmental Tribunal Act, 1995 and National Environment Appellate Authority Act 1997 and in 2010 the new Act National Green Tribunal Act, 2010 has been passed.

Penalty not complying with Solid Waste Management Rules: In August 16th, 2017 the National Green Tribunal levied penalty to 5 Star Hotels and Banquet Hall in Delhi like Rs.7 Lakh on Taj Palace, Taj Vivanta Hotels and Zorba Entertainment Pvt. Ltd, Rs. 5 Lakh each on Crown Plaza in Mayur Vihar, the Lalit and Hotel Metropolitan. Rs. 3 Lakhs each on Golden Petal Hotel and Banquet and Mayur Vihar-based Holiday Inn and Rs. 2.50 Lakh on G. K Motel Pvt. Ltd.

Centralized Scrutiny and Prosecution Mechanism (CSPM) 2018: Ministry of State for Corporate Affairs P.P. Chaudhary said that CSPM is asked to examine 1,000 top Indian Companies on the non-compliance of the CRS expenditure and sent notices to 272 companies for prosecution proceedings for the fiscal year 2014-15.

DISCUSSION

This paper mainly dealt with the Role of Board in designing and successfully implementing CSR initiatives. To have a comprehensive understanding about the role of the Board of Directors in CSR, it is imperative for any researcher to know about the division in the thought process of various management gurus/thinkers regarding this role. Some believe in "Agency Theory" which believes that the prime responsibility of board is to promote the wealth and wellbeing of the shareholders of the firm (Friedman, 1970). The other extreme of the continuum represents Stakeholder theory, which believes that the Board should have the responsibility to take care of the interests of all its stakeholders and not limited to shareholders (Carroll, 1999). The third school believes that it is imperative for the board of every company to take up CSR as it is mandatory under law (The Companies Act, 2013). Now the question arises whether it is possible for the board to balance both approaches/theories.

If a close observation is made regarding the CSR initiatives by Indian Corporate, it is understood that MNCs can achieve both ends i.e., serving the society and enhancing the profits of the company.

Unilever launched 'Unilever Sustainable Living Plan (USLP)' in November 2010. It aimed at increasing positive social impact and at the same to increasing its size. In its Annual general Body meeting held in 2014 Harish Manwani, CEO of Unilever reiterated the same. According to him "The Plan aims to double the size of its business while decoupling its growth from the environmental impact and increasing its positive social impact" (HUL, 2014). One of such initiatives of Unilever is to think that brands should be at the forefront of social change. To quote an example, in

2013 Lifebuoy ran one of the largest hands washing program in India. Lever launched "Help a Child Reach 5" campaign in a village in Madhya Pradesh namely Thesgora. The village is having highest rates of Diarrhea in the country. The main aim of the campaign was to eradicate child deaths due to diarrhea by teaching the children the importance of hand washing habit. This campaign was done one village at a time. It gave very good result and the incidence of Diarrhea came down by 86%. This gave double benefit for Lever. It can serve the social cause and at the same time enhance the brand image of Lifebuoy. The other examples are "Women empowerment initiatives" by Fair and Lovely, "Clean Drinking water for the cheapest price" by PUREIT and many more (Rajani & Reddy, 2017). Hence, the board of Lever can strike a balance between Agency Theory and Stakeholder Theory.

The other similar examples include "Waste Management" by ITC, "Spending one rupee on the education of girl child from every piece of sale of Whisper by P&G", "educating farmers about the modern techniques of farming and thereby getting higher yield which in turn improves the quality of raw material for Lays Chips by Pepsi etc.

On the other hand, most of Indian Companies mainly PSUs take up CSR only as a part of Stakeholder approach without any focus on Agency Theory. Some of the Boards of the PSU Power Companies even today spend CSR funds on activities like 'development of R&R villages', 'providing educational, medical and self-employment facilities for the Project Affected Persons', 'laying BT roads in the Project Affected Villages', 'constructing community centers', 'providing safe drinking water by constructing Water Tanks and by installing RO plants in the villages', 'providing Electricity for every village' etc. In a close observation it is understood that these initiatives create some positive social impact and development but will not contribute to the brand building of the company or enhanced profits for it. Hence, it is understood that the role of Board of Directors is very crucial in making a balance between spending company funds on CSR and gaining some benefit out of it for the company.

CONCLUSION

Corporate Social Responsibility in the recent years has gained prominence because it is recognized globally. The corporations while doing business they need to take care of the environment and the society as well. The Indian Government has found that all the companies are not involved in CSR activities and we have thousands of companies running their business which includes multinationals, national and small and medium entrepreneurs who are involved in manufacturing products. It is the good initiative of the Government to bring Companies Act, 2013 which has covered even SMEs making CSR activities mandatory. The Government has brought in 2014 Companies CSR policy rules, 2014 and has showed direction to the companies the constitution of CSR Committees, implementing CSR activities and CSR reporting. It is mandatory for the companies to disclose CSR activities and to make it public by posting in the company's website. These provisions shall make companies socially responsible and answerable to the stakeholders and society at large. The further amendment in the Act in 2018 made that all the companies irrespective of unlisted had to spend on CSR and in accordance with Schedule VII of Companies Act, 2013. Further the companies need focus on areas like Protecting Heritage and Art, Rural Sports and Paralympic, Gender Equality and Women Empowerment.

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