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Section 135 of the Companies Act, 2013 - Has it created a Difference?

Dr. Jigar Rupani[1]

Abstract

***Aim** - The current study compares the difference in the level of spending by the public sector companies in India in terms of what is mandated by the government under section 135 of the Companies Act, 2013, and the actual spending by these business houses. The study shows the progress in the spending on CSR after the same as mandated by the Indian Government. The study aims to prove the same by data collected from annual reports of the sample companies.*

***Discussion**- The results of the T-test indicated that in the financial year 2014-15, the companies did not spend the requisite amount on CSR activities as mandated by section 135 of the Companies act. However, the results improved in the following years.*

***Keywords:** Companies Act, 2013, Corporate Governance, Corporate Social Responsibility, India, Public sector, Section 135.*

I. Introduction

With the growing "knowledge population", the expectation of the society from the business houses has increased over time. Some business houses have been proactive and have incorporated systems that interact with society to understand their needs and take steps to address such issues. Governments have also responded to such demands and developed frameworks and guidelines for the social, environmental, and economic responsibilities of the Business. The Securities and Exchange Board of India (SEBI) has mandated that the top 100 companies state their business responsibility report. The development of the CSR clause within the Companies Act 2013 was another big step toward involving the business houses in the development of the society. The government estimated that the CSR amounts pumped into the society might amount to 20,000 INR. The continuous pressure from governments and society has led business houses to include CSR as a part of their strategy and are increasingly putting effort to align their business goals with CSR activities (Zu & Song, 2009). There is a need for studies to elaborate on the spending made by the companies, especially after the implementation of Section 135 in the Indian Companies Act, which mandates organizations to

[1] Author is an Assistant Professor at School of Law Presidency University, India.

invest in CSR activities. But to the best of the researcher's knowledge, there is no available empirical study that has explained the difference in the level of spending by Indian companies after the implementation of this law. Considering the global attention and focus on CSR, this research paper tries to statistically compare the difference in the level of spending by the public sector companies in terms of what is mandated by the government in Section 135 of the companies Act, 2013. and the actual spending by these business houses in India.

(A) Literature Review

The existence of Corporate Social Responsibility has been traced in company documents in the early 1950s. In the last couple of decades, it has been taken seriously by organizations, governments, and society. It is much more institutionalised in the current scenario. The governments across the globe are coming up with several initiatives, including setting up regulatory bodies and laws to improve the management of CSR activities in their respective countries. Managers have discretion regarding which domain they choose to operate in at any particular moment; their basic philosophy regarding the importance of these responsibilities becomes significant (Burton & Hegarty, 1999). However, such domain should be within the statutory requirements of the concerned country; otherwise, the spend may not be considered as CSR and might even be considered as non-compliance.

There has always been a lot of confusion surrounding the definition of CSR. In their study, Reinhardt, Stavins, and Vietor (2008) stated that among the confusing array of concepts and meanings in the literature, it is extremely difficult to identify and sensible and reliable definition of CSR. The fundamental problem with the definition of CSR is that there is not a single definition that is universally accepted across the globe. The growth of social responsibility ideas When the definition of a construct is not exactly defined are universally accepted, it leads to the difficulty of measuring the same. Therefore, it is not uncommon to find that different organizations develop and understand different meanings of CSR. The challenge, in this case, is the difficulty while comparing one organization with another in terms of the CSR initiatives that they undertake. One fundamental point of discussion on CSR has always been that "Does management have a fiduciary duty to maximize corporate profits in the interest of shareholders, or can it sacrifice profits by voluntarily exceeding the requirements of environmental law?" (Hay, Stavins & Vietor, 2005, p.2)

Elhauge (2005) defined CSR as the initiatives by organizations wherein they sacrifice the profits for the interest of society. This definition was further supported in the studies conducted by Reinhardt et al. (2008) and Bénabou & Tirole (2009). So, it is a voluntary decision by the organizations to serve society without being forced by the government to do the same.

Carroll (1979, 1991) defined CSR in four parts and was described as "Corporate social responsibility encompasses the economic, legal, ethical, and discretionary (philanthropic) expectations that society has of organizations at a given point in time". Studies by Edmondson and Carroll 1999; Pinkston and Carroll 1996 and others further reassured the usefulness and validity of the instrument developed by Aupperle (1984), which was based on Caroll's model of corporate social responsibility. The four components of Caroll's model are elaborated as hereunder:

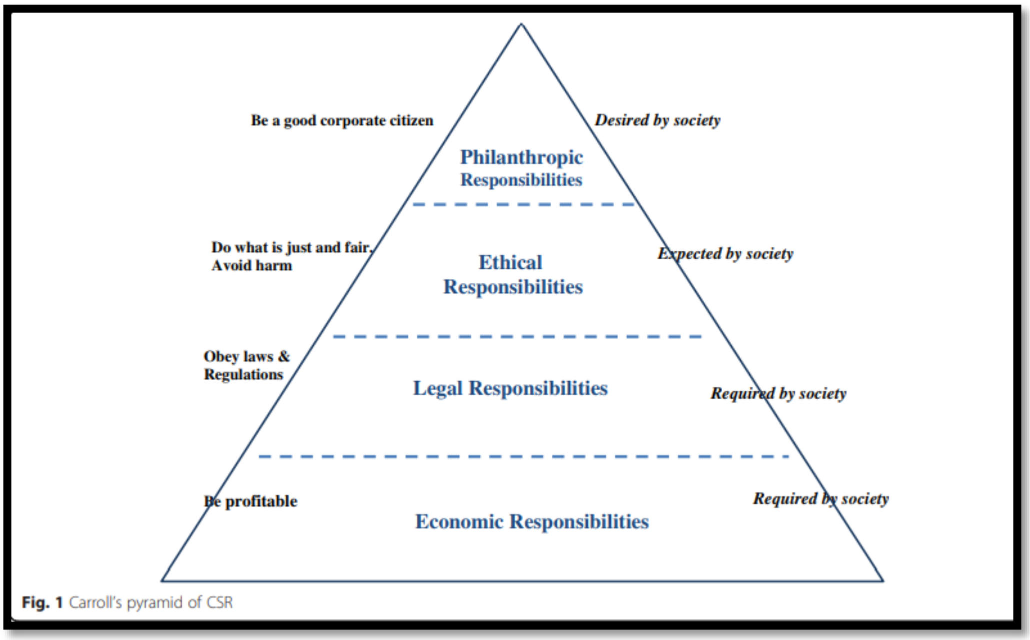

Figure 1: Caroll's pyramid of CSR

1. Economic responsibilities

This is considered to be the most basic responsibility, mainly directed toward the sustainability of society. It might sound unusual to expect economic returns as an element of CSR, but actually, society expects the business organization to sustain, earn profits and increase the value of the shareholders. Society wants the organization to grow and develop more resources for its business.

The society actually expects the organization to sell the products or services which they need and desire. What the business gets in return for selling these desired products or services is the revenue which includes the profits. The understanding is that the business will earn profits when it adds value to society. The profits earned are not only important for the stakeholder but also for the growth of the business as some part of the profits gets invested again into the business. One of the biggest motivations in business is the profits that the company earns.

2. Legal responsibilities

Society has also created a framework for the business to run. Though the business has not only been considered an economic entity it is also being regulated by society under some basic rules and regulations. These rules and regulations basically direct the organization towards fair business practices. The framework mentioned above is developed by the state, central, or local authority. The organizations are supposed to follow the rules as set by the authority.

3. Ethical responsibilities

It is important to understand that laws are important, but it does not mean that organizations will follow these rules and regulations. It is an expectation of society that the business houses will follow the legal framework in an ethical manner.

Once the companies agree to take the ethical path, society understands that the organization will not create any challenge for them. The organizations that follow ethics are generally not expected to indulge themselves in activities that can harm society, though such activities might not be in the purview of the legal framework. This responsibility of the organization plays a very crucial in creating an image of the organization. The organization must stay away from activities that are not accepted by society, even though those activities might not be regulated by the legal entities. Society expects that the business houses will echo the values and regulations of its stakeholders, be it the customers, the company employees, or its shareholders.

4. Philanthropic responsibilities

This aspect includes the discretionary aspect of the business houses. It encompasses all the activities which involve the “giving” part of the business. This is one of the most common expectations of the current society that the business should not be reminded of what it needs to do for society; rather, it should find ways how it can contribute to the development of society.

This responsibility includes those activities that are not mandated by the legal structure, nor are they part of the ethical framework. There is always an expectation from society that the business houses will give back to society, which frames the “expectation” facet of the responsibility. There are many ways that the organizations can involve themselves in philanthropy, such as – donation in terms of money, service and products to the needy, involvement of the company employees in activities that help in the development of society, etc. (Schwartz & Carroll, 2003)

II. CSR LAWS IN INDIA

Historically, the companies initiated CSR activities as they wanted to solve the challenges faced by society since these companies had the resources to address such issues. The companies also felt obliged to society because they felt that they earned their revenues from society, so a part of the profit could be given back to society.

This movement of voluntary activities moved from a position of voluntary involvement to a situation, where governments across the globe are increasingly pushing for regulatory bodies to manage CSR activities by the organizations. This change in perspective has been prompted as the governments started facing problems such as companies making false disclosures about their spending on CSR and taking advantage of the tax benefits. The *laissez-faire* approach, which was followed by the government earlier, is being increasingly replaced by strict government rules.

India is among the first countries globally to legally regulate CSR requirements in the country. The central government of India introduced Section 135 in the Indian Companies Act in the year 2013. According to this Act, organizations having a specified financial threshold should mandatorily spend an average of 2% calculated out of the average net profit during three preceding financial years. The financial thresholds have been described as the companies having a net worth of rupees five billion or more during any financial year.

The Act has been enforced from 1st April 2014. This CSR act directs organizations to spend a part of the profits on social and environmental issues. Several notifications have followed after the implementation to smoothen the process. It mandates the companies, including the holdings, subsidiaries, and foreign companies with branches in India, to follow the Act if they meet the above stated financial criteria.

III. PENALTY FOR NON-COMPLIANCE WITH CSR PROVISIONS OF THE COMPANIES ACT

Section 135 does not impose any penalty if the company fails to do requisite spending. In such cases, the Board of the company should mention the reasons for the failure in the company report. Section 135(5) mentions that if the company fails to do so, the Board shall specify the reasons for its failure under section 134(3)(o). In cases where the company does not comply with section 134 also, then the company shall be punishable under section 134(8). Under section 134(8), if the company fails to comply with the provisions mentioned in section 134, which is concerned with the declaration of the company report prepared by the Board, then the company is liable to be punished. The company shall be fined, which will not be less than Rs. 50,000, but this may extend up to Rs.25Lakhs. The officers of the company who are found to be at fault shall be punishable with imprisonment, which may extend to 3 years, or with a fine which shall not be less than Rs.50,000 but may stretch up to Rs.5 Lakhs, or with both.

IV. RESEARCH METHODOLOGY

(A) Aim Of The Study

The aim of this study is to compare the difference in the level of spending by the public sector companies in terms of what is mandated by the government Section 135 of the companies Act, 2013 and the actual spending by these business houses in India.

(B) Research Question

Is there a difference in the level of spending by the public sector companies in terms of what is mandated by the government under section 135 of the companies Act, 2013 and the actual spending by these business houses in India?

(C) Hypothesis

H_{01} : There is no difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2014-15.

H_{a1} : There is a difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2014-15.

H_{02} : There is no difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year 2015-16.

H_{a2} : There is a difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2015-16.

H_{03} : There is no difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2016-17.

H_{a3} : There is a difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2016-17.

H_{04} : There is no difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2017-18.

H_{a4} : There is a difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2017-18.

(D) Research Design

The current study is a cross-sectional descriptive research on corporate social spending of public sector companies in India. The researcher in order to find the relevant data pertaining to the amount of CSR spending by the public sector organizations in India, the researcher collected the annual reports of these companies from the following sources:

- company websites
- email requests sent directly to the companies or
- company yearly brochures.

Thirty-three public sector companies listed on the National Stock Exchange in India were selected for the study. The data relating to their "profits after tax" and CSR-related spending were collected from the above mentioned sources. The years considered for the current study were 2014-15, 2015-16, 2016-17, and 2017-18. The criteria for selection of the companies were the following-

- The company should be listed on National stock exchange.
- If company should have met any of the following financial thresholds during the immediately preceding financial year:
    - Net worth of INR 500 crore or more
    - Turnover of INR 1,000 crore or more
    - Net profit of INR 5 crore or more

(E) Statistical Tests Used

In order to answer our research questions and hypothesis, the researcher used descriptive as well as the inferential statistics. In terms of descriptive statistics, the following are the analysis done –

1. mean,
2. standard deviation and

In terms of inferential statistics, a T-test was conducted.

(F) Statistical Tools Used

The tools used to conduct the study are Microsoft Excel version 2010 and Statistical Package for the Social Sciences (SPSS, version 20).

V. Results

(A) Company Profile

A matrix of sector-wise division and type of the selected companies

	No. of Companies
	Public
Manufacturing	6
Service	12
Processing	15
Total	33

(B) Inferential Analysis

H_{01} : There is no difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2014-15.

H_{a1} : There is a difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2014-15.

In the financial year 2014-15, the mean of "actual CSR spending" (45.09) is found to be lower than the mean of "prescribed CSR spending" (60.66) among the public sector companies in India.

This t-test results in the study found that there is a difference in the prescribed CSR and actual CSR spending ($t(33)=-2.03$, $p= 0.02$) among the public sector companies in India in the financial year ending 2014-15. Therefore, we reject the null hypotheses.

H_{02} : There is no difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year 2015-16.

H_{a2} : There is a difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2015-16.

In the financial year 2015-16, the mean of "actual CSR spending" (58.86) is found to be lower than the mean of "prescribed CSR spending" (62.76) among the public sector companies in India.

The t-test results in the study found that there is no difference in the prescribed CSR and actual CSR spending (t(33)=2.03, p= 0.58) among the public sector companies in India in the financial year ending 2015-16. Therefore, we fail to reject the null hypotheses.

H_{03} : There is no difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2016-17.

H_{a3} : There is a difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2016-17.

In the financial year 2016-17, the mean of "actual CSR spending" (54.13) is found to be lower than the mean of "prescribed CSR spending" (54.78) among the public sector companies in India.

This t-test results in the study found that there is no difference in the prescribed CSR and actual CSR spending (t(33)=2.03, p= 0.91) among the public sector companies in India in the financial year ending 2016-17. Therefore, we fail to reject the null hypotheses.

H_{04} : There is no difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2017-18.

H_{a4} : There is a difference in the prescribed CSR and actual CSR spending among the public sector companies in India in the financial year ending 2017-18.

In the financial year 2017-18, the mean of "actual CSR spending" (51.20) is found to be higher than the mean of "prescribed CSR spending" (50.40) among the public sector companies in India.

The t-test results in the study found that there is no difference in the prescribed CSR and actual CSR spending (t(33)=2.03, p= 0.85) among the public sector companies in India in the financial year ending 2017-18. Therefore, we fail to reject the null hypotheses.

VI. Discussion

The term 'corporate social responsibility' is still in popular use, even though competing, complementary and overlapping concepts such as corporate citizenship, business ethics, stakeholder management, and sustainability are all vying to become the most accepted and widespread descriptor of the field. (Carroll & Shabana, 2010). Section 135 of the Companies Act, 2013 was already in force during the financial year 2014-2015. The board of the companies) were aware of the fact that the companies which do not comply with the law will have to face action. The compliance was based on the mandatory spending by the company on its CSR activities. The company has to spend 2 percent of the three preceding years profit after-tax amount. This law is applicable to all companies having a minimum net worth of Rs. 500 crores or a minimum turnover of Rs. 1000 crores, or a minimum net profit of Rs. 5 crores.

If the company fails to spend this amount, then the board is supposed to report the reasons for its failure in the company's annual report. Failure to report might result in imprisonment as well monetary punishments.

As far as the profit criteria is concerned, spending on CSR is required only when the company achieves minimum threshold levels of profits. It is generally believed that socially responsible firms are more profitable and vice versa. A new concept of CSR, while recognising the primacy of economic considerations, also adheres to the idea that social consequences should be attended to both directly and indirectly in determining economic strategies (Chrisman & Carroll, 1984). However, there is insufficient evidence to support the claim that socially responsible firms are more profitable than other firms (Aupperle, Carroll & Hatfield, 1985). In the financial year 2014-15, the companies failed to spend the mandated amount on CSR activities. In spite of the law, the companies failed to make the required spending. This may be due to several reasons. First, the companies were still understanding the intricacies of the law (section 135). The Union Government was sending notifications continuously during the year to strengthen the law. Secondly, the companies did not have a proper plan on how to spend the amount dedicated to its CSR activities. They were not prepared enough to conduct such activities, particularly on a large scale. Thirdly, the companies were expecting the government to be lenient on them if they fail to comply to the law since this was the first year after implementation. Last but not the least, the company board now had the legal information that even if they fail to spend the mandated account, still they can escape the law by declaring the reasons in the company reports.

The current study results are in accordance to what was detected by the Ministry of Corporate Affairs in 2014 and reported by The Economic Times (2014), that the companies who have failed to provide details or an explanation for its non-compliance were asked to provide detailed report by the Ministry.

The Ministry revealed that initial notices were sent to the non-compliant companies. This notice is in accordance to the section 206 of the Companies Act, 2013, where the Union Government has the right to demand information and examine the accounting books of the company. The non-compliant companies were generally of two types, the first being the companies which not at all spent on CSR and the second group consisted of companies who have spent less than the mandated amount.

In the financial year 2015-16, 16-17, and 17-18, the mean of "actual CSR spending" is found be lower than mean of "prescribed CSR spending" among the public sector companies in India. However, the t-test results in the study found that there is no difference in the prescribed CSR and actual CSR spending among the companies in India in these financial years. Therefore, we fail to reject the null hypotheses. We can say that there is no difference in the "actual CSR spending" and "prescribed CSR spending" and most of the companies started following the Section 135 of the Companies Act 2013. This was the second financial year after the CSR law was enforced. The companies, by this time were aware of the intricacies involved in following and not following this law. The company board and auditors had developed plans in order respect the requirements of this law.

VII. Conclusion

Corporate Social Responsibility by companies has been introduced in Section 135 of Companies Act, 2013. This section needs to read along with Companies (Corporate Social Responsibility Policy) Rules, 2014 and Schedule VII of the Act. Section 135 provides that-

Corporate Social Responsibility by companies has been introduced in Section 135 of Companies Act, 2013. This section needs to read along with Companies (Corporate Social Responsibility Policy) Rules, 2014 and Schedule VII of the Act. Section 135 provides that CSR is the face of industry face of doing trade.

Bibhu said that today, corporate houses took CSR as a medium for fulfilment of profit greed further the article explored that today companies are investing in different areas like child labour, ground water, food, education, employment etc. but nobody is aware about the essential need of world's poor. The article suggested that profit earning is a natural fact of companies but CSR is beyond the natural and statutory obligation of the companies.

VIII. Current scenario of CSR in India

Corporate Social Responsibility by companies has been introduced in Section 135 of the Companies Act, 2013. This section needs to read along with Companies (Corporate Social Responsibility Policy) Rules, 2014, and Schedule VII of the Act. Section 135 provides that-

(1) Every company having a net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more, or a net profit of rupees five crores 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.

(2) The Boards report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall:

- Formulate and recommend to the Board a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) should,

a) Take into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose the contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; &

b) Ensure that the activities as are included in the Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1) shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy: provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities. If the company fails to spend such an amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount with proper explanation.

Every company, either private company or public company, beyond the thresholds specified below is required to constitute CSR Committee:

- Net worth of Rs.500 crore or more; or
- Turnover of Rs.1000 crore or more; or
- Net profit of Rs. 5 crores or more during any financial year.

The Board of every company referred above shall ensure that the company spends, in every financial year, at least two percent of the net profits of the company made during the three immediately preceding financial years.

1) Every company having a net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more, or a net profit of rupees five crores 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 Board of every company referred above shall ensure that the company spends, in every financial year, at least two percent of the net profits of the company made during the three immediately preceding financial years.

The current study attempts to understand the involvement of Indian companies in corporate social responsibility (CSR). CSR plays a vital role in the development of a country. The part of CSR achieves more importance in a country like India, where around 70 percent of the total population lives in rural areas. In the Indian context, there is a large gap between the urban and rural areas, especially in terms of the facilities such as healthcare, transportation, education, nutrition level, sensitivity towards rights, etc. The government is not solely responsible for the development of the country. The situation would be ideal when the corporate shares a part of the responsibility and help develop society.

Elhauge (2005) defined CSR as the initiatives by the organizations wherein they sacrifice the profits for the interest of society. This definition was further supported in the studies conducted by Reinhardt (2008) and Bénabou & Tirole (2009). So, it is a voluntary decision by the organizations to serve society without being forced by the government to do the same.

The results of the current study indicate that the companies failed to comply with the requisite CSR spending in the financial year 2014-15. Section 135 of the Companies Act, 2013 was already in force during the financial year 2014-2015. The reasons for the failure might be attributed to reasons such as lack of preparation of the companies or lack of knowledge about the same. The current study showed that the company's performance in terms of CSR spending improved in the following years as several notifications from the government clarifying section 135 were communicated to the companies.

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