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CORPORATE SOCIAL RESPONSIBILITY – PERSPECTIVES IN INDIAN CONTEXT

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ABSTRACT

Corporate Social Responsibility (CSR) has become one of the most talked about subject today with the inclusion of mandatory CSR in the New Companies Act 2013, which has been enforced from 1st April 2014 in India. All companies with turnover of Rs.1,000 crore and more – or a net worth of Rs.500 crore and more or net profit of Rs.5 crore and more – will have to spend at least two percent of their three-year average profit every year on CSR activity. India is the first country in the world to mandate Corporate Social Responsibility (CSR) spending. The paper aims at presenting an overview on the New CSR provision envisaged under section 135, further, this paper investigates the spending pattern of Indian companies contributing towards CSR activities. The study is based on Secondary Data, presented in tables, collected from top 20 Indian Companies from their respective sectors ranked by Economic Times. The Profit after Tax from the Annual Reports of Financial Year 2009-2010, 2010-2011, 2011-2012 and 2012-2013 were considered to assess the difference between actual and stipulated spending. The finding reveals in most cases, companies do not even spend 1% of their PAT on CSR. With the Companies Act, it will mean more than doubling CSR budgets. Companies should look at CSR as a 360 degree perspective - including their business processes, people & planet policies, regulations and compliance. Right now it is largely charity and donations. While the introduction of CSR provision in the Companies Act is a welcome step, however the current discourse of corporate philanthropy without giving any express autonomy to companies in choosing their CSR activities may not yield the desired outcome. Thus, the policy-makers should frame rules for social business projects instead of eliminating it from the scheme of CSR regime altogether.

Keywords: CSR, New Companies Act, Clause 135, Profit after Tax, Spending pattern
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INTRODUCTION

Corporate Social Responsibility (CSR) has become one of the most talked about subject today with the inclusion of mandatory CSR in the New Companies Act 2013, which has been enforced from 1st April 2014 in India. This has been notified by the Ministry of Corporate Affairs ("MCA") on February 27, 2014 giving effect to Section 135 the new Companies Act, 2013 ("Companies Act") dealing with CSR read with Schedule VII ("Schedule") of the Companies Act and the Companies (Corporate Social Responsibility) Rules, 2014 ("CSR Rules").All companies with turnover of Rs.1,000 crore and more – or a net worth of Rs.500 crore and more – or net profit of Rs.5 crore and more – will have to spend at least two percent of their three-year average profit every year on CSR activity. Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending, making this provision de facto mandatory. This is in furtherance of powers provided to the Central Government under Section 469 and Section 467 the Companies Act to make and alter rules, regulations etc. and any provisions contained in any of the schedule under the Companies Act. India is the first country in the world to mandate Corporate Social Responsibility (CSR) spending.

The concept of CSR spending is not new in India. Indian MNCs like Tata Group, Mahindra Group etc. are not just profitable business ventures but a respected corporate body's world over. During the initial phase of the CSR development, charity and philanthropy were the main drivers of CSR in India. Culture, religion, family values and tradition had influential effect on CSR. Indian Business Houses focused on economic and social wellbeing aspects. The basic objective of CSR was to maximize the company's overall impact on the society and stakeholders. Many of the companies helped by providing good standard of living by way of building schools, conducting various healthcare related awareness programmes in schools and community, medical camps, eye check-up and cataract surgery camps, school children health screening programs, HIV/AIDS awareness programs etc.

OBJECTIVE OF THE STUDY

The objective of this paper is to present an overview on the New CSR provision envisaged under section 135, further, this paper investigates the spending pattern of Indian companies contributing towards CSR activities with view to identify the present status on CSR spending in Indian Companies and areas in which they contribute to the social development.

LITERATURE REVIEW

Literature has been reviewed to study the impact of CSR. The World Business Council for Sustainable Development (WBCSD) defines CSR as "the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families, as well as of the community and society at large." The philosophy is basically 'to give back to the Society, what it has taken from it', in the course of its quest for creation of wealth. The great grandson of Henry Ford once commented, "A good company delivers excellent product and services, and a great company does all that and strives to make the world a better place". This comment captures the true essence of CSR.

Kadrolkar (2011) discusses how Corporate social responsibility (CSR) has been widely regarded as a positive phenomenon helping bridge the gap of social inequality and thus contributing to sustainable development. In addition to this, he illustrated the CSR practices in developing countries. He conducted an analysis of performance of several Indian companies in CSR front and concluded that CSR is becoming a leading principle of top management and of entrepreneurs. Thus, organizations should re-examine their pattern of behaviors in the Triple Bottom Line framework and begin their journey toward a sustainable approach that is integrated into their business strategy.

Saha (2013) studied the current practices of CSR in various Indian companies. For this study, 18 companies were selected on random basis from the depository of the Global Reporting Initiative (GRI).The study concluded that the performances of the selected companies on CSR are good. Many companies however over performed whereas many couldn't perform well to that extent. Meena (2013) focuses on the changes with respect to Corporate Governance and Corporate Social Responsibility. In her paper, she deliberates that it took almost 100 years to formulate the New Companies Act 2013. Key changes with regards to this Act were viz1. Duties and liabilities of directors/independent directors, 2.Auditor rotation, 3.Constitution of National Financial Reporting Authority (NFRA) and 4.Corporate Social Responsibility (CSR). She concluded that the Companies Act 2013 is a positive and strong step towards corporate governance and CSR and will have far reaching implications.

Ramanujam & Sangeetha (2013) stated that at last, Indian Parliament found time to enact the new law for companies in India. They highlighted on the tax implications, Sooner or later, claims are bound to be made on the amounts spent on CSR. After all, the expenditure is mandated under the law. Further, informed what happens if companies choose to play safe and contribute to the Prime Minister's National Relief Fund to avoid all controversies? Such contributions will also be tax deductible. They concluded that every effort should be made to see that there is no litigation in implementing the new policy. Both the corporate houses and the department of company affairs owe it to the public at large to ensure the success of the new initiative.

Gupta & Arora (2013) studied the business implications on CSR. They stated that there is lack of awareness and conviction amongst the managers. They concluded that the message is loud and clear: Societal wellbeing is a pre-requisite for business prosperity. Companies should look upon business not merely as a source of income or profit, but as a way of life, as a medium for putting talents to good use, while at the same time affording an opportunity to be of service to the community. CSR needs to permeate all across the value chain. It has to be realized that the future of business depends upon its ability and willingness to respond to the changing genuine aspirations of the society.

Sharma (2014) concludes that social participation of business would grow and result in a harmonious and healthy bond between the society and business. CSR creates a better public image and goodwill for the company which ultimately results in better business and also projects every corporate as a better corporate citizen. Zafar & Farooq (2014) examines how SMEs can make their financial performance better by properly engaging in CSR practices. CSR helps the SMEs to achieve many organizational benefits like reputation, trust, motivation, attracting better employees, cost reduction and increased revenues etc. However, most of the SMEs are not much familiar with the concept of CSR particularly in Pakistan. He suggested that SMEs must engage in CSR practices for the betterment of society as well as themselves.

Kumar (2014) tries to analyze the CSR status in India. It was found that companies have started to realize the importance of CSR and initiating the steps towards it. However, it is difficult that for one single entity to bring about change, as the scale is enormous. Effective partnerships between corporate, NGOs and the government will place India's social development on a faster track.

METHODOLOGY

The study is based on secondary data, presented in tables, collected from top 20 Indian Companies from their respective sectors ranked by Economic Times. The Profit after Tax from the Annual Reports of Financial Year 2009-2010, 2010-2011, 2011-2012 and 2012-2013 were considered to assess the difference between actual and stipulated spending. The calculations are based on two percent of their three-year average profit after tax. Note: Although we have calculated the amount that may be spent on CSR in FY 13-14, section 135 makes it mandatory to spend on CSR from FY 14-15 onwards only.

NEW COMPANY ACT 2013 (CLAUSE 135): CORPORATE SOCIAL RESPONSIBILITY [10]

Every qualifying company will be required to constitute a CSR Committee (‘Committee”) of the Board of Directors (“Board”) consisting of three or more directors. The Committee shall formulate and recommend to the Board, a CSR policy which shall indicate the activities to be undertaken; recommend the amount of expenditure to be incurred on the activities referred and monitor the CSR policy of the company. The Board shall take into account the recommendations made by the CSR Committee and approve the CSR policy of the company. It will be important to understand the key changes brought in by the CSR Rules and Schedule VII as captured originally under Section 135 of the Companies Act.

Inclusive Definition of the Term CSR

While the Companies Act used CSR as a nomenclature without actually defining it, the notified rules have defined the term ‘CSR’ to mean and include but not limited to:

- Projects or programs relating to activities specified in the Schedule; or
- Projects or programs relating to activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated in the Schedule.

By providing the definition of CSR, the scope and application of CSR that can be undertaken by the companies has been further clarified. The definition of CSR assumes significance as it allows companies to engage in projects or programs relating to activities enlisted under the Schedule. It also permits flexibility to companies by allowing them to choose their preferred CSR engagements that are in conformity with the CSR policy.

By keeping the definition of CSR inclusive, MCA acknowledges the urgent need of the industry to be given more freedom in choosing their CSR activities. However, it would be interesting to watch this space and see whether such autonomy (if given) can have any significant multiplier effect - both for the economy and corporates. It also needs to be seen whether such autonomy will allow flexibility to companies in choosing activities from outside the list of Schedule

Institutional Coverage of CSR

While Section 135 (1) of Companies Act brings under its purview every company which would mean to include a company incorporated in India. The CSR Rules have made an attempt to broaden the definition of the term 'company' to include a foreign company having a branch or project office of a foreign company. This gives an expansionist scope under the CSR Rules to regulate such companies which prima facie are not included under Section 135. Thus, the CSR Rules which were supposed to be supplementary to the main provision seems to have overreaching effect well beyond the scope of Section 135 as originally contemplated. This is a clear discordance which may be opened to judicial scrutiny as MCA has gone beyond its legislative mandate. Further, it seems to be an overarching provision and applicability of the same may be perceived by the foreign companies as an additional tax, over and above their corporate taxes for doing business in India.

Computation of Net profit

Every company will have to report its standalone net profit during a financial year for the purpose of determining whether or not it triggers the threshold criteria as prescribed under Section 135(1) of the Companies Act.

Indian company
The CSR Rules have clarified the manner in which a company's net worth will be computed to determine if it fits into the 'spending' norm. In order to determine the 'net profit', dividend income received from another Indian company or profits made by the company from its overseas branches have been excluded. Moreover, the 2% CSR is computed as 2% of the average net profits made by the company during the preceding three financial years.

Foreign company:
The CSR Rules prescribe that in case of a foreign company that has its branch or a project office in India, CSR provision will be applicable to such offices. CSR Rules further prescribe that the balance sheet and profit and loss account of a foreign company will be prepared in accordance with Section 381(1)(a) and net profit to be computed as per Section 198 of the Companies Act. It is not clear as to how the computation of net worth or turnover would be arrived at in case of a branch or project office of a foreign company.

Appointment of Independent Directors on the Board

The CSR Rules have dispensed with the requirement of appointing an independent director on the CSR Committee of the Board of an unlisted company as well as a private company. It has brought in the much needed clarity, as under the boarder scheme of the Companies Act, there is no requirement regarding appointment of independent director on the board of directors of the unlisted or private company.

Further, the CSR Rules have relaxed the requirement regarding the presence of three or more directors on the CSR Committee of the Board. In case where a private company has only two directors on the Board, the CSR Committee can be constituted with these two directors. The CSR Committee of a foreign company shall comprise of at least two persons wherein one or more persons should be resident in India and the other person nominated by the foreign company.

The CSR Rules, by including foreign companies within its ambit, have provided latitude to treat persons authorized by the foreign company akin to directors of an Indian company for the purposes of affixing a fiduciary duty and liabilities in the event of any breach in the reporting requirements for CSR provisions. By expanding the scope of CSR Rules, it is apparent that the government has overlooked the limited role (to accept on behalf of company service of process and any notices or other documents) of the authorized persons of the foreign companies in India.

Modalities for Undertaking CSR Activities

Conducting CSR through a third party
CSR activities can be undertaken through a registered society or trust or a Section 8 Company under the Companies Act. In this regard, the CSR Rules have liberalized the participation of a third party to undertake CSR activities on behalf of the spending company provided it fulfills the relevant track record of three years in undertaking similar projects or programs. Such an entity would have to follow the specifications and modalities regarding utilization of funds, monitoring and reporting requirements as provided by the spending company.

Conducting CSR through group entities
Autonomy to the companies to carry out their CSR activities through their own or holding or subsidiary or associate company's registered society or trust or Section 8 Company have been provided.

Collaborating or pooling resources
Collaboration with other companies for undertaking CSR projects or programs is also permitted subject to the condition that the collaborating companies are in a position to report separately as per the reporting requirements under the Companies Act.

CSR Expenditure

Nature of CSR expenditure and geographic limitations
Expenditure incurred on specified activities that are carried out in India will qualify as CSR expenditure. Such expenditure includes contribution to the corpus or on projects or programs relating to CSR activities. Any activity undertaken solely for the benefits of employees and their families will remain outside the purview of CSR activity.

Expenditure incurred in undertaking normal course of business will not form a part of the CSR expenditure. Companies would need to clearly distinguish those activities which are undertaken specifically in pursuance of normal course of business and those that are done incrementally as part of the CSR initiatives.

Any surplus arising out of CSR activities will not be considered as business profit for the spending company. It is unclear whether the surplus will form part of the CSR Fund for the next financial year.

The CSR Rules are unequivocal in stating that any form of direct or indirect contribution made to any political party by company cannot be counted towards CSR activity.

Employees' contribution towards CSR

Companies are permitted to train their employees and/or personnel of their implementing agencies to build CSR capabilities. Any expenditure incurred in providing such training up to a ceiling of five percent in one financial year is permitted under the CSR budget. However, owing to a ceiling on the percentage of amount that can be spent for training purposes, the idea of including and computing employees' time-value contribution towards CSR has not been factored at all. Allowing companies to train employees subject to a pre-fixed budget while excluding employees' time-contribution will create a dichotomy in allocation of CSR expenditure.

Reporting

It is mandatory for companies to disclose their CSR Policy, programs/projects undertaken and amount spent in their report and the CSR Rules provide for a separate format. The report containing details of such activities and CSR policies have to be made available on the company's website for informational purposes.

Provision for Cease of Applicability of CSR Provision

The requirement and compliance under the CSR provision will cease to be applicable to a company which for the three consecutive years falls outside the purview of the threshold requirement of annual turnover or net worth or net profit as envisaged under Section 135(1) of the Companies Act.

Scope of Activities under Schedule VII

According to Schedule VII, the following activities may be included by companies in their Corporate Social Responsibility Policies:

- eradicating extreme hunger and poverty and malnutrition, promoting preventive healthcare and sanitation and making available safe drinking water;
- promotion of education; including special education and employment enhancing vocation skills especially among children, woman, elderly and the differently abled and livelihood enhancement projects;
- promoting gender equality and empowering women; setting up homes and hostels for women and orphans, setting up old age homes, day care centers, and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- ensuring environmental sustainability ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining of quality of soil, air and water;
- protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up of public libraries; promotion and development of traditional arts and handicrafts;
- measures for the benefit of armed forces veterans, war widows and their dependents;
- training to promote rural sports, nationally recognized sports, and Paralympic sports and Olympic sports;
- contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- rural development projects.
- Slum development.

Substantial changes have been made into the activities enlisted in the Schedule. In the present CSR Rules, the scope of activities under the Schedule has been expanded to include preventive healthcare, sanitation, providing safe drinking water, protection of national heritage, rural development projects, measures to benefit armed forces veterans, rural development projects and the like.

Similarly, several new spectrum of activities such as promoting rural sports, nationally recognized sports, setting up homes and hostels for women, orphans and senior citizens, reducing inequalities in socially and economically backward groups and support to technology incubators in academic institutions have also been included in the list of CSR activities under Schedule. However, the most notable absentees are 'social business projects' and residual clause giving power to the government to prescribe other matters on CSR related activities.

ANALYSIS AND DISCUSSION

Among the top 20 companies selected sector-wise Table 1 shows:

- Companies that went beyond the 2% rule, and by how much.
- Only three companies had spent beyond 2% for the FY 2012-13.
- Tata steel Ltd., Coal India Ltd. and Ultra Tech Cement Ltd. have spent more than required.
- Ranbaxy Laboratories Ltd. has contributed towards CSR, even in spite of their negative average PAT (Loss).

TABLE 1. COMPANIES CSR SPENDING BEYOND 2% (AMT. IN CR.)

Company	2% Average Profit After Tax	Actual CSR Spending
Indian Oil Corporation Ltd.	144.14	80.08
State Bank of India	194.25	123.27
Tata Motors Ltd.	35.29	19.14
Tata Steel Ltd.	124.06	170.59
Coal India Ltd.	110.27	150.00
Hindalco Industries Ltd.	41.93	29.79
Bharti Airtel Ltd.	152.49	29.56
NTPC Ltd.	180.36	79.53
Bharat Heavy Electricals Ltd.	115.75	63
Tata Consultancy Services Ltd.	161.10	65.21
ITC Ltd.	101.41	82.34
Ultra Tech Cement Ltd.	32.96	43.40
Jet Airways (India) Ltd.	(11.29)	NA
Tata Chemicals Ltd.	9.53	NA
Videocon Industries Ltd.	11.27	NA
Ranbaxy Laboratories Ltd.	(8.88)	4.26
United Spirits Ltd.	7.36	NA
Shipping Corporation of India Ltd.	3.44	NA
Fortis Healthcare Ltd.	2.49	NA
Zee Entertainment Enterprises Ltd,	10.83	1.41

It can be observed from Table 2 the percentage of profits spent on CSR and their CSR areas. The list changes its character once we look at the amount spent in absolute terms. The list is, unsurprisingly, topped by Tata steel Ltd, with almost Rs 170.59 crore spent on CSR in FY 2012-13. The list also includes Coal India Ltd, State Bank of India ITC Ltd. Indian Oil Corporation Ltd. and NTPC Ltd. The chart below shows the top spenders among the top 20 companies from their respective sectors and the approximate amount they spent on CSR in FY 2012-13 and the areas, wherein they have contributed viz. Health, Environment, and Community Welfare. There were companies like Jet Airways (India) Ltd., Tata Chemicals, Videocon Industries Ltd, United Spirits Ltd., Fortis Healthcare Ltd., and Shipping Corporation of India Ltd. who had contributed to CSR, but did not disclose the CSR spending.

TABLE 2. TOP PAYERS IN ABSOLUTE TERMS WHO HAVE SPENT ON CSR (AMT. IN CR.) AND THEIR CSR AREAS[11]

Companies	CSR Areas	CSR Spending
Indian Oil Corporation Ltd.	Environment, Community Welfare, Art, Culture and Heritage Conservation	80.08
State Bank of India	Education, Girl Child, Poverty Eradication	123.27
Tata Motors Ltd.	Environment, Community Welfare, Rural Development	19.14
Tata Steel Ltd.	Environment, Community Welfare, Rural Development	170.59
Coal India Ltd.	Community Welfare, Water, Education, Healthcare	150.00
Hindalco Industries Ltd.	Healthcare, Education, Vocational Training	29.79

Bharti Airtel Ltd.	Education, Community, Welfare, Environment	29.56
NTPC Ltd.	Environment, Community Welfare, Physically Challenged	79.53
Bharat Heavy Electricals Ltd.	Environment, Community Welfare, Vocational Training	63.00
Tata Consultancy Services Ltd.	Energy, Community Welfare, Education	65.21
ITC Ltd.	Community welfare, Rural development	82.34
UltraTech Cement Ltd.	Environment, Women, Education, Livelihood	43.40
Jet Airways (India) Ltd.	Health care, Disaster relief , Blood donation	NA
Tata Chemicals Ltd.	Rural development, Education, Women's empowerment, Community welfare	NA
Videocon Industries Ltd.	Community welfare, Sports, Health care, Education	NA
Ranbaxy Laboratories Ltd.	Health care, community welfare	4.26
United Spirits Ltd.	Education, Health care, Community welfare	NA
Shipping Corporation of India Ltd.	Poverty eradication	NA
Fortis Healthcare Ltd.	Health care, community welfare	NA
Zee Entertainment Enterprises Ltd.	Community welfare	1.41

Further, many companies are not using the structured suggested format for reporting. The spending on Corporate Social Responsibility reporting of the companies shows that Tata Steel Ltd, Coal India Ltd. and Ultra Tech Cement Ltd were spending more than 2%. There could be more companies, who might have spent beyond 2%, which have not been part of this sample studied. Companies like Jet Airways (India) Ltd., Tata Chemicals, Videocon Industries Ltd, United Spirits Ltd., Fortis Healthcare Ltd., and Shipping Corporation of India Ltd. have not disclosed their CSR spending. It is found that Tata Steel Ltd has been the highest spender for FY 2012-13. Indian Oil Corporation Ltd., which is ranked number one as per ET ranking, has been fifth in the order of corporate spending. Moreover, Ranbaxy Laboratories Ltd. has contributed Rs. 4.26 Cr. towards CSR, in spite of their negative average PAT (Loss). From the Table 3, given below, we can find out what has been the spending pattern and what the companies ought to spend with the New Companies Act 2013, which has been made mandatory. We have calculated the potential CSR spending that may be spent for FY 2013-14.

Again, out of the twenty companies selected, five companies have spent less than 1% on CSR activities. These companies pose a grave question and will have to improve to a great extent on CSR spending. It is really a big challenge for these companies with the New Companies Act 2013. In many cases, the reporting requirements have been diluted by excessive descriptive text and avoiding statistics. Companies do not seem to be at par, when it comes to the understanding of CSR principles.

TABLE 3. CURRENT AND POTENTIAL CSR SPENDING (AMT. IN CR.)

COMPANY	**2% PAT (FY 12 – 13)**	**ACT. CSR SPENT (FY 12 – 13)**	**Pot. 2% PAT (FY 13 – 14)**
Indian Oil Corporation Ltd.	144.14	80.08	109.37
State Bank of India	194.25	123.27	227.18
Tata Motors Ltd.	35.29	19.14	22.37
Tata Steel Ltd.	124.06	170.59	124.17
Coal India Ltd.	110.27	150.00	150.37
Hindalco Industries Ltd.	41.93	29.79	40.49
Bharti Airtel Ltd.	152.49	29.56	123.62
NTPC Ltd.	180.36	79.53	206.30
Bharat Heavy Electricals Ltd.	115.75	63.00	131.11
Tata Consultancy Services Ltd.	161.10	65.21	208.88
ITC Ltd.	101.41	82.34	123.79
UltraTech Cement Ltd.	32.96	43.40	43.37
Jet Airways (India) Ltd.	(11.29)	NA	(11.41)
Tata Chemicals Ltd.	9.53	NA	10.92
Videocon Industries Ltd.	11.27	NA	8.12
Ranbaxy Laboratories Ltd.	(8.88)	4.26	(13.77)
United Spirits Ltd.	7.36	NA	6.99
Shipping Corporation of India Ltd.	3.44	NA	0.17
Fortis Healthcare Ltd.	2.49	NA	2.40
Zee Entertainment Enterprises Ltd.	10.83	1.41	11.38

CONCLUSIONS AND RECOMMENDATIONS

Although CSR Rules have expanded the scope of activities that the companies may undertake, it has, at the same time, not expressly permitted the choice of activities outside the Schedule. Thus, the Schedule may seem to be limiting for certain types of companies that engage in the field of social business or entrepreneurship which the CSR provisions intend to address. These companies have many challenges to showcase their contribution towards CSR with the New Companies Act of 2013. In most cases, companies do not even spend 1% of their PAT on CSR. With the Companies Act, it will mean more than doubling CSR budgets. Companies should look at CSR as a 360 degree perspective, including their business processes, people & planet policies, regulations and compliance. Right now, it is largely charity and donations.

CSR Rules are silent on the tax treatment of 'contribution' and 'spending' made through CSR fund by the companies. The tax difference between making donations and spending towards activities enumerated under the Schedule may vary vastly. By including PM National Relief Fund into the Schedule, policy-makers have allowed companies to merely write cheques and claim deductions instead of carrying CSR activities on the ground. Therefore, the new CSR provisions have to be aligned with the existing income-tax laws. It seems that the tax implication of the mandatory spending on CSR activities has many flaws. Again, what will happen to those companies, who have been spending voluntarily, and more than 2%? What happens to those companies with profit less than Rs. 500 crore? What about those companies, who do not earn profit for that year - how are they supposed to manage their spending pattern? Yet again, if the companies are not able to meet the 2% average spending, what would happen? All seems to be unclear. As it has been clearly mentioned, that the companies will have to spend, and if they don't, they will have to give an explanation only.

It is important to see whether CSR Rules is positioned to allow convergence with foreign contribution regime in India. Any foreign contribution received from any foreign source requires approval under the Foreign Contribution Regulation Act, 2010 ("FCRA"). It is interesting to note that the definition of foreign source is wide enough to include an Indian company wherein one-half or more nominal share capital is held by a citizen of a foreign country or a foreign corporation or a foreign company. Therefore any spending or contribution made by the foreign source falling within the ambit of the CSR provision will come within the purview of FCRA hence no spending/contribution can be made without the express approval or permission by the Ministry of Home Affairs. Allow ability of foreign as well as Indian companies' to make contributions through CSR provision may give rise to inter-regulatory fault-lines within the broader context of CSR and foreign contribution regime in India.

No clarity under the Companies Act is provided towards any mechanism that allows computation of accounts of a foreign company in order to determine the net worth or turnover of a branch or a project office. Ascertaining the incidence of CSR exposure in the absence of any clear provision for financial computation of branch or project offices of foreign companies may prove problematic and create practical difficulties. In order to retain the advantage of having a CSR provision in the Companies Act, MCA must also facilitate greater convergence with tax and foreign contribution laws in India.

Further, the power to make and alter rules, regulations etc. and any provisions contained in any of the schedule under the Companies Act has made the Act more rigid. It is time that will decide as to what would be the outcome; it is definitely a good initiative taken by the Government of India, however the current discourse of corporate philanthropy without giving any express autonomy to companies in choosing their CSR activities may not yield the desired outcome. In order to enable corporates to participate fully in the philanthropy space, the participation must start with a more inclusive management of CSR policies where government and industry work side by side, which does not assume that (social) business and CSR are incompatible. Thus, the policy-makers should frame rules for social business projects instead of eliminating it from the scheme of CSR regime altogether.

Some of the recommendations for the companies would be to adhere to the New Companies Act of 2013 and disclose their CSR spending in the prescribed format. They will also have to assess and measure the gap between the actual and ought to be spent amount on CSR and accordingly device an appropriate plan of action by constituting a CSR Committee. They will have to maintain a checklist to evaluate and monitor CSR initiatives by providing statistics and not mere text and pictured description.

TABLE 4. COMPANIES AND THEIR PAT – FY 2010, 2011, 2012 & 2013 AND SECTOR (AMT. IN CR.)[14]

COMPANY	FY 2010	FY 2011	FY 2012	FY 2013	SECTOR
Indian Oil Corporation Ltd.	10,220.55	7,445.48	3,954.62	5,005.17	Refineries
State Bank of India	9,166.05	8,264.52	11,707.29	14,104.98	Finance – Banks
Tata Motors Ltd.	2,240.08	1,811.82	1,242.23	301.81	Automobiles
Tata Steel Ltd.	5,046.80	6,865.69	6,696.42	5,062.97	Steel

Coal India Ltd.	3,779.92	4,696.10	8,065.10	9,794.32	Mining/Minerals
Hindalco Industries Ltd.	1,915.63	2,136.92	2,237.20	1,699.20	Aluminium
Bharti Airtel Ltd.	9,426.15	7,716.90	5,730.00	5,096.30	Telecom
NTPC Ltd.	8,728.20	9,102.59	9,223.73	12,619.39	Power Gen. /Dist.,
Bharat Heavy Electricals Ltd.	4,310.64	6,011.20	7,039.96	6,614.73	Engineering
Tata Consultancy Services Ltd.	5,618.51	7,569.99	10,975.98	12,786.34	Computers
ITC Ltd.	4,061.00	4,987.61	6,162.37	7,418.39	FMCG
UltraTech Cement Ltd.	1,093.24	1,404.23	2,446.19	2,655.43	Cement
Jet Airways (India) Ltd.	(467.64)	9.69	(1,236.10)	(485.50)	Transport
Tata Chemicals Ltd.	434.78	408.49	586.60	643.32	Chemicals
Videocon Industries Ltd.	400.66	744.69	545.56	(71.63)	Electronic
Ranbaxy Laboratories Ltd.	571.98	1,148.73	(3,052.05)	(162.34)	Pharmaceuticals
United Spirits Ltd.	376.02	385.47	342.79	320.80	Distilleries
Shipping Corporation of India Ltd.	376.91	567.35	(428.21)	(114.31)	Shipping
Fortis Healthcare Ltd.	30.41	141.81	201.39	17.25	Medical Services
Zee Entertainment Enterprises Ltd.	558.84	576.42	489.70	640.70	Entertainment

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