ANALYSIS OF THE AMOUNT SPENT FOR CORPORATE SOCIAL RESPONSIBILITY ACTIVITIES BY THE MAHARATNA PUBLIC SECTOR UNDERTAKINGS

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"In a free enterprise, the community is not just another stakeholder in business, but is, in fact, the very purpose of existence" - Jamsetji Nusserwanji Tata

ABSTRACT:

This paper makes an attempt to study evolution of Corporate Social Responsibility in India and recent developments in this sphere. As a part of the study considering the new requirement of mandatory spent of 2% of average net profit of immediately 3 preceding financial years a brief analysis of the amount spent by the Public Sector Undertakings in the Maharatna category for the financial year 2011-12, 2012-13 and 2013-14 are made. The data is mainly gathered from the Annual Reports for the year 2011-12, 2012-13 and 2013-14 and websites of the companies studied.

INTRODUCTION

As a famous saying goes "with great power comes great responsibility". Corporate Social Responsibility is nothing but what an organization does, to positively influence the society in which it exists. There are many ways service to the society can be delivered which includes community oriented services like providing food and shelter to the poor and marginalized, scholarship to encourage education, aid to preserve cultural heritage, volunteer assistance programmes, beautification of cities etc.,. The philosophy is basically to return to the society what it has taken from it, in the course of its quest for creation of wealth.

CSR is generally seen as the business contribution to sustainable development which is defined by the Brundtland Commission as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" and is generally understood as focusing on how to achieve the integration of economic, environmental and social imperatives. CSR also overlaps and often is synonymous with many features of other related concepts such as corporate sustainability, corporate accountability, corporate responsibility, corporate citizenship, corporate stewardship etc.

The European Union describes CSR as "the concept that an enterprise is accountable for its impact on all relevant stakeholders. It is the continuing commitment by business to behave fairly and responsibly, and contribute to economic development while improving the quality of life of the work force and their families as well as of the local community and society at large". In other words CSR is a contribution to sustainable development implying the way a company balances
its economic, environmental and social objectives while addressing stakeholder expectations and enhancing shareholder value.

The Organization for Economic Co-operation and Development (OECD) established a set of guidelines for multinational enterprises in 1976, and was thus a pioneer in developing the concept of CSR. The purpose of these guidelines was to improve the investment climate and encourage the positive contribution multinational enterprises can make to economic and social progress.

Even though we can trace back the history of corporate social responsibility to the period of Vedas, the concept of 'corporate social responsibility' which we are seeing in today's context originated is predominantly considered as a western phenomenon due to strong institutions, standards, and appeal systems which are weak in developing countries of Asia (Chapple and Moon, 2005). Asian firms often lag behind their Western counterparts on CSR practices (KPMG, 2005). However, advent of liberalization and globalization, entry of MNCs in Asian markets, rising consumer expectations towards business, and emergence of pressure groups have made the case of CSR stronger in Asian countries including India.

Question may arise as to why there is need for a business to serve the community? The answer is that business is expected to create wealth, create market, generate employment, innovate and produce a sufficient surplus to sustain its activities and improve its competitiveness. Society is expected to provide an environment in which business can develop and prosper, allowing investor to earn returns. Business depends for its survival and long term prosperity on society providing the resources viz., people, raw materials, services and infrastructure. To convert raw materials into profitable goods or services, it needs these inputs from the society.

Voluntary standards such as ISO 14000, OHSAS 18000, Social Accountability (SA) 8000 (SAI, 2001), United Nations' global compact, and Global Reporting Initiative guidelines (GRI, 2002) outline a wide range of responsible business practices related to stakeholder issues such as environment, occupational health and safety, labor, human rights, corruption, etc. In recent years, an increasing number of companies are making CSR disclosures as per these standards. Nearly 90% of Fortune 500 firms make CSR disclosures in their annual reports (Boli and Hartsuiker, 2001). However, Indian companies lag behind their global counterparts in terms of CSR disclosure.

The approach of business organizations to CSR has transcended from merely displaying social concerns to being sensitive and alert to the constituents in the internal and external business environment. These constituents, known as stakeholders, are potent forces to accelerate or decelerate a firm's performance. A firm's survival and success depends on the ability of its managers to create sufficient wealth and satisfaction for its primary stakeholders (Clarkson, 1995). Primary stakeholders of a firm include employees, shareholders, customers, suppliers, communities, and natural environment. If any of the primary stakeholder groups withdraws its support to the firm, the firm's operation is adversely affected (Clarkson, 1995).

With globalization of national boundaries and information technology revolution, companies are under tight scrutiny from multiple stakeholders including regulators, investors, customers, pressure groups, and the public at large. When stakeholders lose confidence in a firm's performance, the firm loses its critical support structure and customer base (Lee, 2008). Customers stop buying products or go for legal suits, shareholders sell their stocks, employees do not perform, and environmental advocates sue (Wood, 1991), all of which directly affect firm performance. This warrants pursuing meaningful and long-term relations with stakeholders.

Firms that establish relationship with primary stakeholders beyond market transactions gain competitive advantage (Barney and Hansen, 1994; Fomburn and Shanley, 1990). Effective management of key stakeholders acts as a value driver by leveraging performance and reducing stakeholder-inflicted costs. Lower employee turnover reduces hiring and training costs, loyal suppliers reduce quality certification costs, supportive communities reduce legal and public relations overhead, and stable shareholders. In order to achieve sustainability in business, firms must identify key stakeholders affecting the firm, identify their needs, and design organizational policies and practices to cater to them.

CSR AN INDIAN PERSPECTIVE

In India, the evolution of CSR refers to changes over time in cultural norms of corporations' engagement and the way businesses managed to develop positive impacts on communities, cultures, societies, and environment in which those corporations operated. CSR motives changed during the independence movement in India toward social reforms to encourage empowerment of women and rural development. Indian companies mostly focus their CSR activities on community development.

A 20-country public opinion survey finds that India is the last in the level of CSR demanded from companies in any country (Environics International, 2001). A lack of provable link between CSR and firm performance often discourages companies from engaging in CSR (British Council et al., 2002). Obstacles to CSR are found to be ad hoc approach by the top management towards CSR, lack of consensus on priorities within the firm, and problems related to measurement and evaluation of CSR activities (Krishna, 1992). Unclear policies, bureaucracy, poor monitoring, complicated tax systems, and poor infrastructure are a few more hindering factors (CSM, 2001). However, there is a growing feeling among the Indians that business organizations must play a wider role in the society besides providing quality products at reasonable rates, making their operations environmentally sound, adhering to high labor standards, and reducing human rights abuses at the work place (Kumar et al.,2001). Consequently, Indian companies have started changing their outlook towards CSR by looking beyond passive philanthropy.

The increasing disparity between the poor and rich especially in developing countries like India as a result of globalization of economy underlines the importance of inclusive growth. The policy analysts believe that the large market at the bottom of the pyramid can help in creating sustainable business models since they provide the scale and platform to experiment and innovate. Even though the governments at the Centre and in the States in their efforts to reach the bottom of the pyramid introduced many development schemes, however the absence of proper delivery mechanism and limited resources became a barrier to achieve the intended objectives.

The role of NGO's as a facilitator in the efforts of the Government to achieve inclusive development is increasingly recognized. However adequate and timely funding and the required support from various governmental agencies some of the major handicaps faced by these NGO's in achieving the desired results. Now, considering the mandatory CSR spent by corporate under the new Companies Act, NGO's can look forward to the corporate sector to be part of their CSR efforts which will also help the corporate to fulfill the statutory obligation governing CSR. In addition to own efforts, these NGO's can support the CSR activities by extending their domain expertise to these companies. At the same time, this would lead to capacity building for the non-profit sector. Partnering with non-profit organizations will enable companies to maximize the opportunity to foster employee engagement and benefit from their contributions and efforts in supporting local communities, by institutionalizing CSR as an integral part of their business processes.

CONSTITUTIONAL PROVISIONS AND ROLE OF COURTS IN PROMOTING SOCIAL RESPONSIBILITY IN INDIA

We can relate a number of provisions in the Constitution of India to social responsibility. Article 38 of the Constitution provides that the State has to secure a social order for the promotion of welfare of the people. Article 36-51 in Part IV of the Indian Constitution deals with the Directive Principles of State Policy. These policies are introduced with a view to implement the idea of welfare state. Today we are living in an era of a welfare state which has to promote the prosperity and well being of the people. The Directive Principles lay down certain economic and social policies to be pursued by the various governments in India, they promote certain obligation on the State to take positive action in certain directions in order to promoter the welfare of the people and achieve economic democracy. The Directive Principles do not impose any particular brand or pattern of economic or social order. They lay down the goals which may be achieved through various means which have to be devised from time to time.

Article 39 specifically requires the State to direct its policy towards securing the following principles:

a) Equal right of men and women to adequate mans of livelihood

b) Distribution and ownership and control of material resources of the community to the common good.

c) To ensure that the economic system should not result in concentration of wealth and means of production to the common detriment. Equal pay for equal work for both men and women.

d)

e) To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.

f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Clause (f) was modified by the Constitution (42^{nd} Amendment) Act, 1976 with a view to emphasize the constructive role of the state with regard to Children.

The Hon'ble Supreme Court have played major role in promoting social responsibilities and also in reminding the Governments, Citizens and Corporate on their responsibilities to the society while disposing public interest litigations came before these Courts. Some of the landmark judgments in this connection are described below.

In M.C Mehta v. State of Tamil Nadu it has been held that in view of Art 39, the employment of children within the match factories directly connected to the manufacture of matches and fireworks cannot be allowed as it is hazardous.

In another landmark judgment in M.C Mehta v State of T.N known as (Child Labour Abolition case) a three judge Bench of the Supreme Court it was held that children below the age of 14 years cannot be employed in any hazardous industry, or mines or other work.

In M.C.Mehta (II) v Union of India, the Supreme Court relying on Article 48 A gave directions to Central and State Governments and various local bodies to take appropriate steps for prevention and control of pollution of water.

In Bijoy Cotton Mills v State of Ajmer the Supreme Court upheld the constitutional validity of Minimum Wages Act since it was enacted to give effect to directive principles of state policy.

The issue of non-implementation of the law abolishing the pernicious practice of bonded labour came for consideration in Bandhua Mukti Morcha v. Union of India. This was a PIL case in the Supreme Court brought by an NGO highlighting the deplorable condition of bonded labourers in a quarry in Haryana. The Court relying on DPSPs given extensive directions to the State government to enable it to discharge its constitutional obligation towards the bonded labourers
Public Interest Litigation (PIL) cases concerning environmental issues have enabled the Court to develop and apply the 'polluter pays principle' the precautionary principles and the principle of restitution

In Union Carbide Corpn v. Union of India the Supreme Court of India approved a settlement whereby UCC would pay the victims USD 470 million in full and final settlement of all civil and criminal claims, in the present and in the future. The Supreme Court justified its acceptance of the settlement on the ground that it has the compelling duty, both judicial and humane, to secure immediate relief to the victims.

The above mentioned are some of the instances where the Supreme Court became instrumental in promoting social responsibility among the Government, corporate entities and business concerns.

RECENT DEVELOPMENT – MANDATORY CSR OBLIGATION UNDER COMPANIES ACT 2013

In a dynamic and constantly evolving business environment the concept of "Corporate Social Responsibility" or CSR is gaining more and more importance due to the fact that a sustainable business needs the support of Society. In the Indian context till recently the CSR had been a voluntary exercise akin to philanthropy where few established organizations spent small portion their earnings for philanthropic activities. It has always been a common belief in our society that social welfare is the responsibility of the Government.

With the implementation of the new Companies Act from April 1, 2014 India has become the first country in the world which made Corporate Social Responsibility (CSR) a mandatory obligation for corporate and also imposed penal provisions for non-compliance. The Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 to come into effect from April 1, 2014. With effect from April 1, 2014, every company, private limited or public limited, which either has a net worth of Rs 500 crore or a turnover of Rs 1,000 crore or net profit of Rs 5 crore, needs to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities. The CSR activities should not be undertaken in the normal course of business and must be with respect to any of the activities mentioned in Schedule VII of the Companies Act. Contribution to any political party is not considered to be a CSR activity and only activities in India would be considered for computing CSR expenditure.

The activities that can be undertaken by a company to fulfill its CSR obligations include eradicating hunger, poverty and malnutrition, promoting preventive healthcare, promoting education and promoting gender equality, setting up homes for women, orphans and the senior citizens, measures for reducing inequalities faced by socially and economically backward groups, ensuring environmental sustainability and ecological balance, animal welfare, protection of national heritage and art and culture, measures for the benefit of armed forces veterans, war widows and their dependents, training to promote rural, nationally recognized, Paralympic or Olympic sports, contribution to the prime minister's national relief fund or any other fund set up by the Central Government for socio economic development and relief and welfare of SC, ST, OBCs, minorities and women, contributions or funds provided to technology incubators located within academic institutions approved by the Central Government and rural development projects.

In order to formulate and monitor the CSR policy of a company, a CSR Committee of the Board needs to be constituted. Section 135 of the 2013 Act requires the CSR Committee to consist of at least three directors, including an independent director. However, CSR Rules exempts unlisted public companies and private companies that are not required to appoint an independent director from having an independent director as a part of their CSR Committee and stipulates that the Committee for a private company and a foreign company need have a minimum of only 2 members.

If a company is unable to spend the contribution amount in a year it should specify the reasons for not spending that amount in its Director’s Report published in the annual report. One of the major lacunae in the provisions which may affect the efficacy of the CSR implementation is the fact that there is no penal provision regarding non-compliance of the provisions with respect to spending or in reporting part. However, there are clear penal consequences if a company fails to even set up the CSR committee or fails to create a policy etc. If a company fails to spend the money, it only has to report this along with reasons. Section 134(8) of the Act provides for such penal provision stating in case the company does not disclose the reasons in the Board‘s report, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. Where a company has a website, the CSR policy of the company would need to be disclosed on such website pursuant to rule 9 of the CSR Rules.

We can see the mandatory CSR envisaged under the Companies Act as an attempt to supplement various efforts initiated by the Government for achieving inclusive growth and to make the

Corporate World also as a part of the country's development agenda. This step assumes significance considering that India has grown to be one of the largest economies in the world with more and more foreign companies investing in India but still it has the largest number of people living in absolute poverty and the largest number of undernourished children. The lopsided development results in uneven distribution of the benefits of growth and will lead to social unrest.

The first step towards introduction of mandatory CSR framework was initiated by the Government in the form of National Voluntary Guidelines for social, environmental and economic responsibilities of business issued by the Ministry of Corporate Affairs in June 2011. This was followed by the Business Responsibility Reports mandated by the SEBI for the top 100 companies and the CSR clause within the Companies Act, 2013. These steps taken by the Government have to be seen as the measures to create more awareness on the need for an inclusive development besides ensuring that there is an obligation on the corporate that make profit.

CSR AT CENTRAL PUBLIC SECTOR ENTERPRISES

Public sector undertakings are considered as key contributors to socio-economic development of India. The government of India formed public sector undertakings (PSUs) to attain inclusive growth, considering the social as well as economic development of the country. The government established them with the purpose of building industrial capacity, creating employment opportunities and improving the socio-economic condition.

Both, central public sector enterprises (CPSEs) and state level PSUs have played a vital role in supporting the socio-economic development of the country. They are actively involved in various areas of CSR such as education, healthcare, improving infrastructure, social empowerment, vocational training and environmental protection among others. With a high degree of support from the government, CSPEs acts as a catalyst of social enterprise by providing such diverse services for grass root development.

The Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises issued by the DPE in April 2013 states that "Since corporate social responsibility and sustainability are so closely entwined, it can be said that corporate social responsibility and sustainability is a company's commitment to its stakeholders to conduct business in an economically, socially and environmentally sustainable manner that is transparent and ethical."

Good CSR practices can only bring in greater benefits which includes increased reputation and good will, confidence of community at large, employee loyalty etc.,

In order to align the present requirements from the sustainability and inclusive development perspective, the Department of Public Enterprises (DPE) issued revised CSR and sustainability guidelines effective April 2013 to induce centre public centre enterprises (CPSEs) to follow a robust CSR practice that is in the interest of all stakeholders.

As per the new guidelines, it is mandatory for CPSEs to disclose its various CSR initiatives and performance to stakeholders. Earlier, CSR and sustainable development were treated as two separate subject areas and were dealt with differently for the purpose of memorandum of understanding (MoU) evaluation. However, now they are combined into a single set of guidelines for greater transparency. The budgetary allocation for CSR also stands modified.

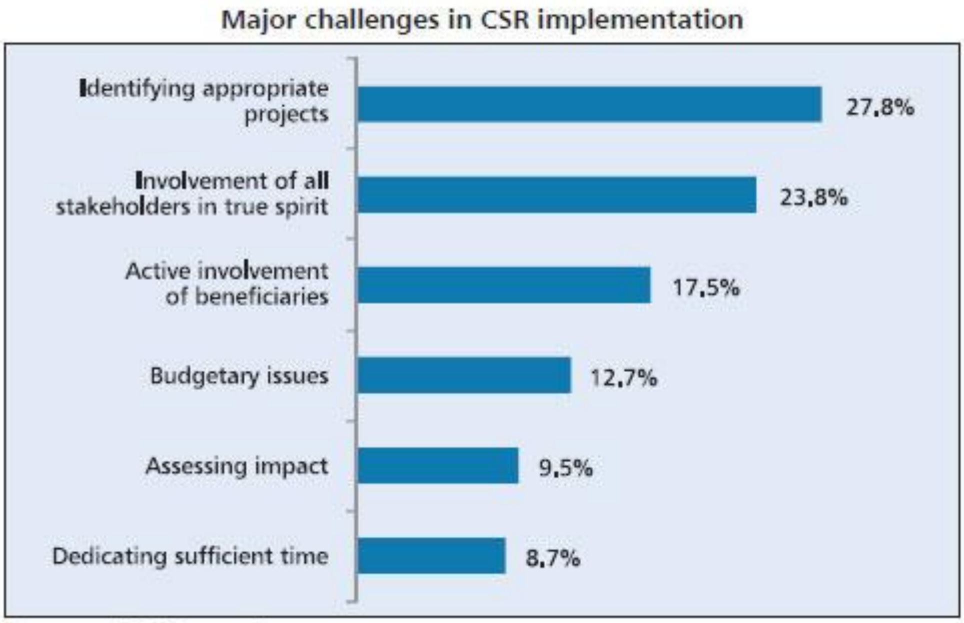
The revised CSR and sustainability budgetary allocation for CPSEs is as under:-

Net Profit in the previous year	Budgetary allocation as a % of net profit in previous year
Less than ₹ 100 Crs	3% - 5%
₹ 100 Crs - ₹ 500 Crs	2% - 3%
₹ 500 Crs and above	1% - 2%

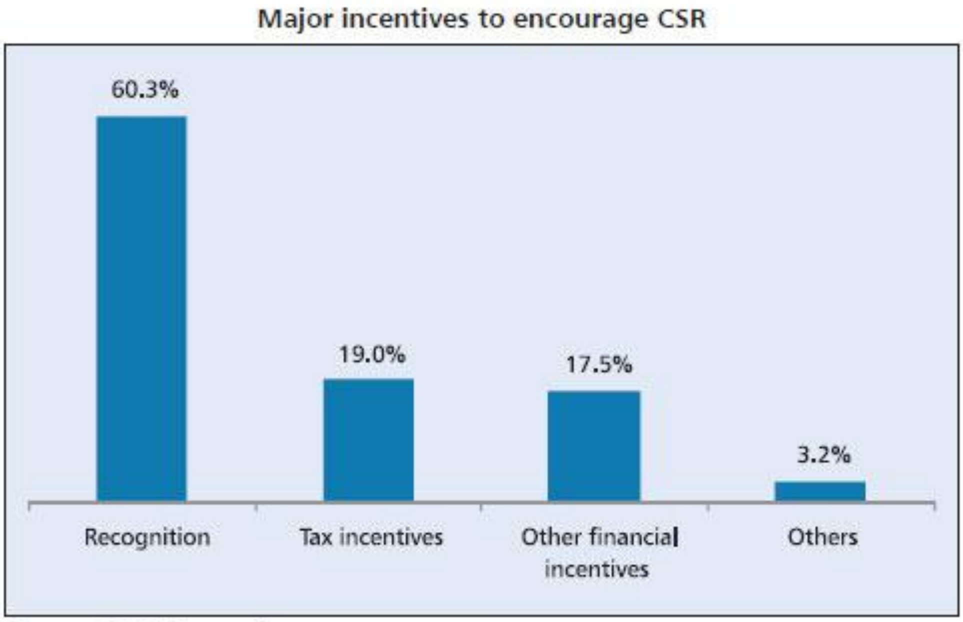
Source: Department of Public Enterprises, Guidelines on CSR and Sustainability for CPSEs

As per the revised guidelines, the CPSEs would have to utilize and spend the entire amount earmarked for CSR, or would have to disclose the reasons for not utilizing the full amount. Further, if the CPSEs are unable to spend the earmarked amount for CSR in a particular year, it would have to spend the amount in the next two financial years, failing which, it would be transferred to 'Sustainability Fund'. Currently, its implementation mechanism is being formulated separately.

As per the study conducted by Dun & Bradstreet (D&B) to analyze CSR initiatives of the PSUs, Environment protection, women empowerment and healthcare are the key focus areas of CSR activities undertaken by PSUs that offered maximum benefits. Other major CSR activities undertaken by these PSUs includes village upliftment, education, job creation, and assistance during natural calamities that provided maximum benefits. The following chart shows some of the important findings in the Study conducted by D&B.



Source: D&B Research



Source: D&B Research

The survey conducted by Times of India group on CSR used a sample size of 250 companies involved in CSR activities elicited responses from participating organizations about various challenges facing CSR initiatives in different parts of the country The survey identified the following are the major challenges.

a) Lack of Community Participation in CSR Activities: There is a lack of interest of the local community in participating and contributing to CSR activities of companies. This is largely attributable to little or no knowledge about CSR within the local communities as no serious efforts have been made to spread awareness about CSR and instill confidence in the local communities about such initiatives.

b) Need to Build Local Capacities: There is a need for capacity building of the local non-governmental organizations as there is serious dearth of trained and efficient organizations that can effectively contribute to the ongoing CSR activities initiated by companies

c) Issues of Transparency: Lack of transparency is one of the key issues brought forth by the survey. There is an expression by the companies that there exists lack of transparency on the part of the local implementing agencies as they do not make adequate efforts to disclose information on their programs, audit issues, impact assessment and utilization of funds.

d) Non-availability of Well Organized Non-governmental Organizations: It is also reported that there is non-availability of well organized nongovernmental organizations in remote and rural areas that can assess and identify real needs of the community and work along with companies to ensure successful implementation of CSR activities.

e) Visibility Factor: The role of media in highlighting good cases of successful CSR initiatives is welcomed as it spreads good stories and sensitizes the local population about various ongoing CSR initiatives of companies. This apparent influence of gaining visibility and branding exercise often leads many nongovernmental organizations to involve themselves in event-based programs; in the process, they often miss out on meaningful grassroots interventions

f) Narrow Perception towards CSR Initiatives: Non-governmental organizations and Government agencies usually possess a narrow outlook towards the CSR initiatives of companies, often defining CSR initiatives more donor-driven than local in approach. As a result, they find it hard to decide whether they should participate in such activities at all in medium and long run.

g) Non-availability of Clear CSR Guidelines: There are no clear cut statutory guidelines or policy directives to give a definitive direction to CSR initiatives of companies.

h) Lack of Consensus on Implementing CSR Issues: There is a lack of consensus amongst local agencies regarding CSR projects. This lack of consensus often results in duplication of activities by corporate houses in areas of their intervention.

AN ANALYSIS OF AMOUNT SPENT BY MAHARATNA PSUS AS PART OF CSR

Considering the mandatory requirement of spending 2% of the average net profit of the preceding 3 financial years for CSR activities by profit making companies, a brief analysis of the amount spent for CSR activities by the Maharatna Public Sector Undertakings as percentage of their net profit for the past 3 years is analyzed here.

The following Public Sector Undertakings are categorized as Maharatnas

1. Bharat Heavy Electricals Ltd (BHEL)
2. Coal India Ltd (CIL)
3. Gail India Ltd (GAIL)
4. Indian Oil Corportion Ltd (IOCL)
5. NTPC Ltd (NTPC)
6. Oil and Natural Gas Corporation Ltd (ONGC)
7. Steel Authority of India Ltd (SAIL)

The following table show the amount spent for CSR activities as a percentage of net profit by each of the above companies in the past 3 years i.e 2011-12, 2012-13 and 2013-14.

	2011-12	2012-13	2013-14
BHEL	0.51%	0.57%	1.34%
CIL	0.82%	1.09%	1.57%
GAIL	1.48%	1.62%	1.44%
IOCL	2.1%	1.58%	1.17%
NTPC	0.53%	0.55%	1%
ONGC	N.A	1.25%	1.55%
SAIL	N.A	1.5%	1.7%

FINDINGS:-

The analysis of the expenditure spent by the above companies' viz-a-viz the average net profit of the immediately preceding 3 financial years shows that none of the companies meet the criteria of spending 2% of the net profit for CSR activities. However considering the higher amount of profit these companies are registered during the years under study, the amount spent for CSR activities and the extent of activities undertaken are notable. The Maharatna PSU's being profit making and large in size, the mandatory allocation of 2% of the net profit will substantially increase the corpus size for CSR spending from its current level.

CONCLUSION

The past 3 years saw the concept of corporate social responsibility transforming from a conceptual thing to an integral part of business operations of companies in India. It is gaining importance year after year. Both the society and the corporate are gaining more awareness on the importance of CSR and coupled with regulatory backing CSR is expected to be a game changer in the coming years.

The mandatory requirements as to spending and disclosures in respect CSR has given more transparency and credibility to the CSR activities undertaken by corporate. The study of CSR spent by Maharatna PSEs show that even though these companies are engaged in the extensive CSR activities before it is made mandatory the amount they spent fell short of the mandatorily prescribed limit giving amble room and resources for these Maharatna PSEs to enlarge their CSR activities and act as a catalyst for inclusive growth agenda of the Government.

The Government can further encourage the CSR activities by giving appropriate tax break and other financial incentives for the CSR expenditure which is not currently available and also increase the recognition for CSR activities as these would definitely give a greater momentum to the initiatives undertaken by the Government to promote CSR.

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