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**The Role of Law in Promoting CSR: The Case of Indian  
Maharatna Public Enterprises**

# THE ROLE OF LAW IN PROMOTING CSR: THE CASE OF INDIAN MAHARATNA PUBLIC ENTERPRISES

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## 1. INTRODUCTION

Economic liberalisation and globalisation, increased awareness of the civil society about social and environmental issues, legislative actions and rising consumer expectations from corporations have moved Corporate Social Responsibility (CSR) to the core topic within businesses, in the last few decades.<sup>1</sup> India became the only country to legislate and mandate CSR for certain categories of companies after the enactment of Companies Act, 2013 by the Ministry of Corporate Affairs (MCA), Government of India (GoI).<sup>2</sup>

The legal provisions for CSR seek to create conducive environment for the corporate to harness and channelize their core competencies for nation building and attaining sustainability goals.<sup>3</sup> Section 135 of the Act intends to promote and catalyse the efforts of companies to reach out to the poor, deprived and marginalised sections of the society by fostering collaboration and develop synergy among corporations and non-government organisations for public good. The concept of CSR in India is as old as the society itself; it evolved from charity and philanthropy. Modern day CSR is outcome of sustainability guidelines issued by different government agencies from time to time leading to mandated CSR (Companies Act, 2013). Figure 1 depicts the evolution of legislated CSR in India.

Section 135(1) of the Companies Act, 2013 on CSR mandates that every company having a net worth of INR 5 billion (€ 62.31 million) or more; or revenue of INR 10 billion (€ 124.62 million) or more; or a profit of INR 50

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<sup>1</sup> Rubens Ricupero, *The Social Responsibility of Transnational Corporations* (United Nations Conference on Trade and Development 1999) <[http://unctad.org/en/Docs/poiteit21\\_en.pdf](http://unctad.org/en/Docs/poiteit21_en.pdf)> accessed 20 May 2018.

<sup>2</sup> 'National CSR Portal' (*Csr.gov.in*, 2018) <<https://csr.gov.in/CSR/>> accessed 16 May 2018.

<sup>3</sup> 'National CSR Portal' (*Csr.gov.in*, 2018) <<http://www.csr.gov.in/CSR/about-us.php>> accessed 16 May 2018.

million (€ 0.62 million) or more during any financial year is required to spend, in every financial year, at least 2% of its average net profits made during the three immediately preceding financial years on CSR activities as mentioned under the sub-section (5).<sup>4</sup> Further, the MCA notified the Companies (CSR Policy) Rules, 2014 under Companies Act, 2013 on 27<sup>th</sup> February 2014 which came into effect on 1<sup>st</sup> April 2014.<sup>5</sup> Under Rule 2(1) (c) of the Companies CSR Rules, 2014 CSR means and includes but is not limited to projects or programs relating to activities specified in Schedule VII to the Act.<sup>6</sup> The inclusion of words “means and includes but is not limited to” creates ample scope and freedom to the companies for identifying CSR activities. Furthermore, Rule 3(1) of the Companies CSR Rules, 2014 mentions that every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having branch or project office in India must comply with the provisions of section 135 of the Act if it satisfies the conditions stated under section 135 of the Act.<sup>7</sup>

CSR rules have resulted in a paradigm shift with social responsibility becoming an integral part of the corporate functioning though the idea of social responsibility is not new to India.<sup>8</sup> Many corporate houses such as the Tata and Birla are practising CSR for a long time in the form of charity or philanthropy.<sup>9</sup> In recent times, GoI has taken a few initiatives to advance the agenda of CSR and sustainability. The voluntary guidelines on CSR issued by the Ministry of Corporate Affairs (MCA) in 2009 proposed voluntary adoption of social responsibility by the corporations.<sup>10</sup> In 2010, the guidelines on CSR for CPSEs released by the Department of Public Enterprises (DPE), GoI emphasized that the public-sector enterprises ought to be model companies and display greater responsibility towards the society and environment, and therefore all the profit-making public-sector enterprises should mandatorily spend at least one, three or five per cent (based on net profit) of their

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<sup>4</sup> Companies Act 2013, ss 135(1) and 135(5).

<sup>5</sup> Ministry of Corporate Affairs, ‘Companies (Corporate Social Responsibility Policy) Rules’ (Ministry of Corporate Affairs 2014).

<sup>6</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 2(1)(c).

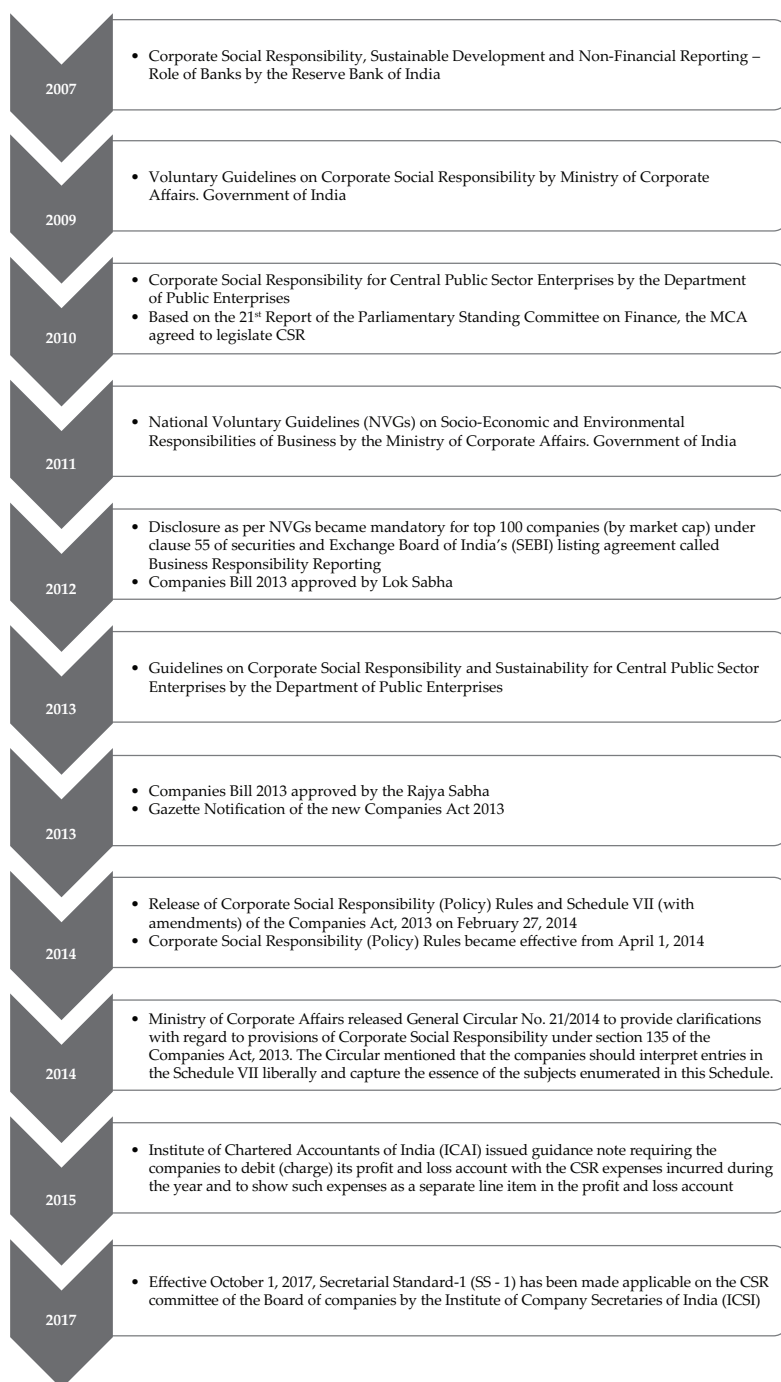
<sup>7</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 3(1).

<sup>8</sup> Amandeep Dhaliwal and Arun Sahay, ‘The CSR Dilemma of Schneider Electric India Private Limited’ (*thecasecentre.org*, 2016) <<https://www.thecasecentre.org/educators/products/view?id=133453>> accessed 15 September 2017.

<sup>9</sup> Vivek Srivastava and Arun Sahay, ‘The Evolutionary Journey of CSR’, *11th Annual Convention of Strategic Management Forum of India* (IIT Kanpur 2008) <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.524.7725&rep=rep1&type=pdf>> accessed 3 February 2018.

<sup>10</sup> Ministry of Corporate Affairs, ‘Corporate Social Responsibility Voluntary Guidelines’ (Ministry of Corporate Affairs 2009).

Figure 1: Evolution of legislated CSR in India



Source: Compiled by authors

net profit on CSR.<sup>11</sup> DPE released guidelines on CSR and Sustainability and advised the CPSEs to undertake CSR keeping in view the larger objective of sustainable development and instructed the CPSEs to adopt a CSR and Sustainability policy in 2013.<sup>12</sup> However, these guidelines were superseded by the path-breaking provision of CSR in 2014.

Despite initial speculation about how the mandatory CSR provisions will be received by the corporates, the trend in CSR expenditure in the last three years suggests that legal provisions have been positively embraced by the enterprises. The data on CSR expenditure reported by companies and released on National CSR Data Portal shows that INR 95.65 billion (€ 1.19 billion), INR 138.28 billion (€ 1.72 billion), and INR 47.19 billion (€ 0.58 billion) have been spent during the financial year 2014-15, 2015-16, and 2016-17 respectively.<sup>13</sup> CSR expenditure for the FY 2016-17 is provisional because of delay in the annual filing as mentioned on the CSR portal. Nevertheless, the Annual CSR Tracker 2017, released by the Confederation of Indian Industry (CII), reported that INR 88.97 billion (€ 1.10 billion) has been spent by 1522 Bombay Stock Exchange (BSE) listed companies including *Maharatna enterprises*.<sup>14</sup> *Maharatna* is a status granted to a CPSE having Navratna status which are listed on Indian stock exchange with minimum prescribed public shareholding under SEBI regulations, average annual turnover of more than INR 250 billion (€ 3.12 billion), during the last 3 years, average annual net worth of more than INR 150 billion (€ 1.87 billion), during the last 3 years, and average annual net profit after tax of more than INR 50 billion (€ 0.62 billion), during the last 3 years.<sup>15</sup> Also, the CPSE should have significant global presence/international operations. The contribution of these companies' amounts to 10.38%, 10.13%, and 14.56% of the total CSR spend during the last three financial years, respectively.

Considering their high net worth, massive profits and CSR budgets, *Maharatna* CPSEs have been selected for the study. Companies which have been accorded *Maharatna* status include Bharat Heavy Electricals Limited

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<sup>11</sup> Department of Public Enterprises, 'Guidelines on Corporate Social Responsibility for Central Public Sector Enterprises' (Department of Public Enterprises 2010).

<sup>12</sup> Department of Public Enterprises, 'Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises' (Department of Public Enterprises 2013).

<sup>13</sup> 'National CSR Portal' (*Csr.gov.in*, 2018) <<https://csr.gov.in/CSR/>> accessed 16 May 2018.

<sup>14</sup> *Annual CSR Tracker 2017* (Confederation of Indian Industry (CII) 2018) <<https://www.sustainabledevelopment.in/uploads/pdf/1523608261Annual%20CSR%20Tracker%202016.pdf>> accessed 17 May 2018.

<sup>15</sup> Press Information Bureau, 'Eligibility Criteria for Grant of Maharatna, Navratna and Miniratna Status to CPSEs' (Ministry of Heavy Industries & Public Enterprises 2014).

(BHEL), Coal India Limited (CIL), GAIL (India) Limited, Indian Oil Corporation (IOCL), National Thermal Power Corporation (NTPC), Oil and Natural Gas Corporation Limited (ONGC), and Steel Authority of India Limited (SAIL).

The study, besides dissecting Section 135 of the Companies Act and the Companies CSR Policy Rules, 2014, attempts to analyse the policy, and process of CSR planning, implementation, monitoring and impact evaluation by these *Maharatna* companies. It also highlights the challenges faced by these corporations in undertaking CSR initiatives throughout the project life cycle. A comparative analysis of trends in the CSR spending of *Maharatna* companies has been made. The data of three years each before and after the enactment of the law has been used for this purpose.

## 2. LITERATURE REVIEW

### 2.1 Systematic Literature Review

The systematic literature review (SLR) enables researchers to assess large base of literature using most reliable, efficient and high-quality methods. The review is concerned with the CSR and excludes corporate governance, society, business ethics, and sustainability which are much broader themes and sometimes used interchangeably with CSR. Moreover, the authors have restricted to articles published in peer-reviewed scholarly journals which have an accepted level of quality.

The databases searched for published journal articles on CSR include EBSCO, ProQuest and Google Scholar. The keywords used for search are “corporate social responsibility in India”, “CSR in India”, “CSR in CPSE”, and “Corporate Social Responsibility in CPSE”. Also, other criteria used for search are “Scholarly journals”, “peer reviewed”, “geographical location” and the period from 1987-2017. The initial search was undertaken based on abstracts, keywords and title. The search was conducted in the late February 2017. Therefore, the articles made available thereafter could not be included in the study. The database search procedure is described in Table 1.

After removal of duplicate articles, we could get 208 different articles in the first phase. Besides, we developed a comprehensive inclusion and exclusion criteria (Table 2) to ensure that only relevant articles are included in the study. After applying the above criteria, the titles, abstracts and keywords of the 208 articles were meticulously reviewed. A total of 141 abstracts qualified for which full texts were obtained.

**Table 1:** Database search protocol

Database	Scope	Date of Search	Date Range	Number of Items	Number of New Unique Items	Cumulative Total
ProQuest	Abstract	22-02-2017	1987-2017	163	163	163
EBSCO	Abstract	22-02-2017	1987-2017	20	16	179
Google Scholar	Abstract	22-02-2017	1987-2017	30	29	208
<b>Total</b>				<b>213</b>	<b>208</b>	<b>208</b>

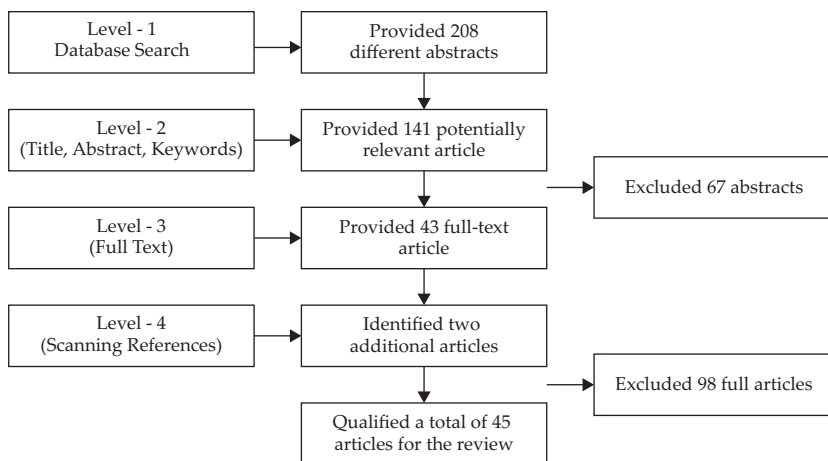
**Table 2:** Inclusion and exclusion criteria

Inclusion	Exclusion
Focus on corporate social responsibility	Focus on corporate governance, society, business ethics, sustainability, economic development, sustainable development, competitive advantage
Public Sector	
Public Sector Organisation	Books, Reports, Newspapers, Wire Feeds, Trade Journals, Magazines, Conference Papers & Proceedings, Other Sources, Working Papers, Dissertations & Theses, and Blogs, Podcasts, & Websites
Peer-reviewed journal	
Full text available	
	Non-English articles

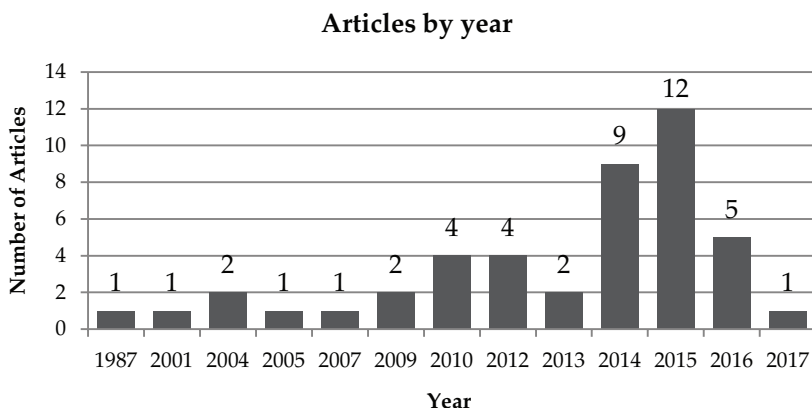
The reading of 141 full texts resulted into rejection of 98 articles. The authors selected 43 articles after a second assessment. The selected articles were checked for references that resulted in two additional articles which also became part of the study. Therefore, a total of 45 relevant articles from the years 1987-2017 on corporate social responsibility in India’s CPSEs were used for the study. However, the authors would like to mention here that only digitised journals and electronic media have been used for the literature review. The search process is explained in Figure 2.

Figure 3 shows that there is a positive trend in the growth of research articles published in the area of ‘CSR in India’. The rush of published articles in the year 2014 and 2015 may be attributed to growing importance of CSR due to CSR legislation in 2013 and mandatory CSR provisions in 2014. As some of the data bases make recent publication available only after certain age and review done till February, 2017, the number of articles available on data bases is low in 2016 and 2017. We could identify only 17 articles specifically dealing with the CSR initiatives in public sector enterprises.

**Figure 2:** Summary of the systemic review process



**Figure 3**



Of these, only six were specific to *Maharatna* companies. However, the existing articles are either published prior to enactment of the Act or do not provide a clear picture on how these state-owned enterprises have responded to mandatory CSR provisions and to what extent they have adhered to the rules stated in Section 135 of the Companies Act, 2013. The trend in CSR spending, and how government has extended support for the effective implementation of CSR activities, too, is not known.

## 2.2 Current Knowledge and Research Gap

CSR has long been a part of Indian society. The contribution of business houses towards social well-being as conceptualised by Mahatma Gandhi



in the form of Trusteeship is a harbinger of the modern idea of CSR.<sup>16</sup> Even before CSR was conceived, several large corporate houses in India had embodied social responsibility in the form of philanthropy.<sup>17,18</sup> However, it is noteworthy that this pro-social disposition was not emanated only from the selfless humanitarian spirit but also driven by business deliberations, caste groups and political objectives.<sup>19</sup>

It is argued that the modern concept of CSR has been founded because a corporation draws land, labour, and other resources from the society and affects it in both positive and negative ways. If a company pulls so many resources from the society, it should respond responsibly to the needs and concerns of the community. CSR has been defined and interpreted by researchers in a variety of ways. CSR is to work ethically and contribute towards the society.<sup>20</sup> CSR implies that the companies have a significant social role in various segments of the society, particularly for those which are directly affected by it.<sup>21</sup> CSR is a corporate strategy to conduct the business in an ethical and socially responsible manner.<sup>22</sup>

India became the first country in the world in 2014 to adopt mandatory provisions for CSR spending.<sup>23</sup> Statutory requirements for CSR has been enacted by GoI considering lack of transparency on the part of Indian companies regarding the CSR activities undertaken by them.<sup>24</sup> The mandatory trusteeship may reduce the quality of CSR interventions and the quantum of money spent on CSR<sup>25</sup> however the binding provisions have the potential to achieve the sustainable development.<sup>26</sup> The

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<sup>16</sup> Bidyut Chakrabarty, 'Universal Benefit: Gandhi's Doctrine of Trusteeship: A Review Article' (2014) 49 *Modern Asian Studies*.

<sup>17</sup> N.K. Balasubramanian, David Kimber and Fran Siemensma, 'Emerging Opportunities or Traditions Reinforced? An Analysis of the Attitudes towards CSR, and Trends of Thinking about CSR, in India' (2005) 17 *Journal of Corporate Citizenship*.

<sup>18</sup> Prema Sagar and Ashwani Singla, 'Trust and Corporate Social Responsibility: Lessons from India' (2004) 8 *Journal of Communication Management*.

<sup>19</sup> Anupama Mohan, 'Corporate Citizenship' (2001) 2001 *Journal of Corporate Citizenship*.

<sup>20</sup> Srikanth R. and Rao Kankipati Srinivasa, 'Corporate Social Responsibility Role of Public and Private Sector Banks' (2015) 4 *Sumedha Journal of Management*.

<sup>21</sup> Prasad K. V. Siva, 'Corporate Social Responsibility: Practices and Challenges in Indian Perspective' (2015) 4 *Sumedha Journal of Management*.

<sup>22</sup> Maimunah ISMAIL, 'Corporate Social Responsibility and its Role in Community Development; An International Perspective' (2009) 2 *The Journal of International Social Research*.

<sup>23</sup> Monika Kansal, Mahesh Joshi and Gurdip Singh Batra, 'Determinants of Corporate Social Responsibility Disclosures: Evidence from India' (2014) 30 *Advances in Accounting*.

<sup>24</sup> Manoj P. K., 'Corporate Social Responsibility in Central Public Sector Enterprises in India in the Reforms Era' (2015) 1 *International Journal of Management and Social Science Research Review*.

<sup>25</sup> Satish Y. Deodhar, 'Trapping India's CSR in a Legal Net: Will the Mandatory Trusteeship Contribute to Triple Bottom Line?' (2016) 41 *Vikalpa*.

<sup>26</sup> Manoj P. K., 'Corporate Social Responsibility in Central Public Sector Enterprises in India in the Reforms Era' (2015) 1 *International Journal of Management and Social Science Research Review*.

usefulness of CSR can be enhanced by making it more robust through participatory mechanism, and capacity building of the organisations.<sup>27</sup> The new paradigms of the tri-sector partnership between government, business and society will be a shift from corporate philanthropy and need to be based on the social commitment of the organisation.<sup>28</sup>

CSR has gained importance in all the sectors in India; it being considered by the companies as a tool to drive competitive advantage. A study of top 500 companies, taken by Karmayog from Dun & Bradstreet's 2006 edition of 'India's Top 500 companies', states that the organizations in the country generally believe that CSR means contributing to the development of the society by doing philanthropic activities.<sup>29,30</sup> The manufacturing industry contributes more to the social development because it utilizes more resources from the society and hence they need to repay them back through CSR.<sup>31,32</sup> Hopkins quotes 'The aim of the CSR is to create higher and higher standards of living while preserving the profitability of the corporation for its stakeholders both within and outside the corporation'.<sup>33</sup> Economic, environmental and social concerns should be integral to a companies' strategy to be competitive and to build brand image.<sup>34</sup>

Numerous privately-owned businesses have also started CSR exercises consciously to create better corporate image and brand value, long-term client connections and customer loyalty even when there was no statutory compulsion. In Indian context, CSR is linked with global competitiveness.<sup>35</sup> Considering the work of Tata Steel in India, CSR is a tool for

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<sup>27</sup> Suprava Sahu, 'CSR Activities of Maharatna Companies in India: An Analytical Case-Based Approach' (2014) 3 International Journal of Management Research and Business Strategy.

<sup>28</sup> Shashi Pingolia, 'Towards Strategic Corporate Social Responsibility in CPSUs: Positive Transformation through DPE Guidelines' [2012] SSRN Electronic Journal <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2136144](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2136144)> accessed 25 May 2017.

<sup>29</sup> Richa Gautam and Anju Singh, 'Corporate Social Responsibility Practices in India: A Study of Top 500 Companies' (2010) 2 Global Business and Management Research: An International Journal.

<sup>30</sup> Supriti Mishra and Damodar Suar, 'Does Corporate Social Responsibility Influence Firm Performance of Indian Companies?' (2010) 95 Journal of Business Ethics.

<sup>31</sup> Wim J.L. Elving and Damla Kartal, 'Consistency in Behavior of the CEO Regarding Corporate Social Responsibility' (2012) 17 Corporate Communications: An International Journal.

<sup>32</sup> Richa Gautam and Anju Singh, 'Corporate Social Responsibility Practices in India: A Study of Top 500 Companies' (2010) 2 Global Business and Management Research: An International Journal.

<sup>33</sup> Michael Hopkins, *The Planetary Bargain* (Taylor and Francis 2012).

<sup>34</sup> A. Sahay and N.P. Singh, 'Indian Corporate Environmental and Financial Performance: Empirical Relationship Between Them' (2005) 2 Journal of Advances in Management Research.

<sup>35</sup> Philippe Gugler and Jaclyn Y. J. Shi, 'Corporate Social Responsibility for Developing Country Multinational Corporations: Lost War in Pertaining Global Competitiveness?' (2008) 87 Journal of Business Ethics.

development.<sup>36</sup> CSR is one of the ways to improve the level of employee engagement.<sup>37</sup> CSR activities result in best outcome when aligned with company's business operations. Also, the awareness of managers towards the need for and the importance of becoming socially responsible would lead to policy prescriptions that will generate lasting benefits for the society.<sup>38</sup>

The PSEs in India were conceptualised to fuel the growth engine of the economy; they were also supposed to improve the living standard of people.<sup>39</sup> Ever since their establishment, many of the CPSEs have embraced community development initiatives for the welfare of people inhabiting near their project sites. The endeavours of CPSEs specifically on the CSR front are exemplary.<sup>40,41</sup> Most of the expenditure in CSR is incurred by the companies in energy or power sectors and at least five *Maharatna* operates in either of these sectors.<sup>42</sup> The PSEs understand the significance of commitment towards socio-economic development as a case for business sustainability and global competitiveness.<sup>43</sup> However, CSR, for the most part, is associated with community development initiatives. The critical aspects of CSR such as sustainability, corporate governance, human rights, supply chain management and so forth, are managed separately.<sup>44</sup> Even though the *Maharatnas* are tending to the social issues through sustainable business models, the budget allocation to CSR initiatives still needs to be tested.<sup>45</sup> Studies have pointed out that in the past even the

<sup>36</sup> Anupam Ghosh and Chhanda Chakraborti, 'Corporate Social Responsibility: A Developmental Tool for India' (2010) 9 IUP Journal of Corporate Governance.

<sup>37</sup> Manimegalai Santhosh and Rupashree Baral, 'The Moderating Role of Top Management Support in the Link between CSR and Employee Engagement – A Conceptual Framework' (2016) 9 Journal of Contemporary Management Research.

<sup>38</sup> Jayashree Sadri and Richa Sharma, 'Showing the Mirror to Indian Business and Actualizing CSR Initiatives' (2015) 4 Asia Pacific Journal of Management & Entrepreneurship Research.

<sup>39</sup> S.R. Keshava, 'The Changing Face of CPSEs in Economic Development of India' (2014) 3 Journal of Radix International Educational and Research Consortium.

<sup>40</sup> Neelam Dhingra, Anil Sarin and B.S. Gill, 'Corporate Social Responsibility in Selected Central Public-Sector Enterprises in India: A Closer Look' (2015) 1 International Journal of Business and Administration Research Review.

<sup>41</sup> Dean Roy Nash, 'CSR: Contributions of "Maharatna" Companies of India:' (2012) 2 Asian Journal of Research in Business Economics and Management.

<sup>42</sup> Prabhjot Kaur and Ramesh Chander, 'Corporate Social Responsibility Spend by Corporate India and its Composition' (2015) XIV The IUP Journal of Corporate Governance.

<sup>43</sup> Jitender Loura, 'Corporate Social Responsibility - A Case Study of Select PSU's Role in Rural Development' (2014) 3 International Journal of Management and Social Sciences Research.

<sup>44</sup> Tridiv Hazarika, 'Corporate Social Responsibility (CSR) – A Popular Corporate Jargon with Multiple Interpretation and Perspectives: A Study of the Approaches to CSR by Oil India Limited and Indian Oil Corporation Limited' (2012) 2 IJCAES Special Issue on Basic, Applied & Social Sciences.

<sup>45</sup> Divya Gupta and Neha Gupta, 'Integrating CSR into Strategic Management: Case of Maharatnas' (2014) 2 The International Journal Of Business & Management <<http://theijbm.com/june2014/42.BM1406-017.pdf>> accessed 16 May 2017.

most reputed CPSEs like CIL, Indian Oil Corporation (IOC), ONGC, and SAIL have failed to utilize CSR funds allocated for the purpose.<sup>46</sup>

One of the key challenges before the business is to develop robust indicators to measure the performance of their CSR projects and programmes.<sup>47</sup> Also, the credibility of business is accounted for its transparency and disclosure.<sup>48</sup> A positive relationship has been found between the CSR disclosure practices and financial performance of companies.<sup>49</sup> However, the CSR ratings are influenced by age and visibility of the company in the market rather than their accounting and market performance.<sup>50</sup>

The environment protection related exercises and related exposure are extremely immaterial in *Maharatna* companies.<sup>51</sup> The statutory reporting on economic indicators is comparatively better than non-financial reporting in the top public and private sector companies in India.<sup>52</sup> Indian organisations have not yet built up an all-encompassing way to deal with environmental disclosure and reporting practices.<sup>53</sup> The major areas of CSR disclosure are human resources and community development while the greenhouse gas emissions are least reported.<sup>54</sup>

Even before legislation, oil and gas CPSEs in India have taken significant steps in conducting their business in sustainable and socially responsible ways following guidelines. Being part of one of the polluting industries, oil and gas companies continue to face pressure from various stakeholders

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<sup>46</sup> Manoj P. K., 'Corporate Social Responsibility in Central Public Sector Enterprises in India in the Reforms Era' (2015) 1 *International Journal of Management and Social Science Research Review*.

<sup>47</sup> Subhasis Ray, 'Linking Public Sector Corporate Social Responsibility with Sustainable Development: Lessons from India' (2013) 14 *RAM. Revista de Administração Mackenzie*.

<sup>48</sup> Kishore Kumar Shah, 'Corporate Social Responsibilities- An Indian Perspective' (2014) 4 *Indian Streams Research Journal*.

<sup>49</sup> Richa Gautam, Anju Singh and Debraj Bhowmick, 'Demystifying Relationship between Corporate Social Responsibility (CSR) and Financial Performance: An Indian Business Perspective' (2016) 7 *Independent Journal of Management & Production*.

<sup>50</sup> Akshita Arora and Tarun Kumar Soni, 'Corporate Social Responsibility and Firm Characteristics: Evidence from BSE 500' (2017) 9 *International Journal of Information, Business and Management*.

<sup>51</sup> D. K. Soni and others, 'Green Initiatives under Corporate Social Responsibility: An Empirical Study on Maharatna Companies of India' (2014) 2 *The International Journal of Business & Management*.

<sup>52</sup> Ram Nayan Yadava and Bhaskar Sinha, 'Scoring Sustainability Reports using GRI 2011 Guidelines for Assessing Environmental, Economic, and Social Dimensions of Leading Public and Private Indian Companies' (2015) 138 *Journal of Business Ethics*.

<sup>53</sup> Manoj Kumar and Jyoti Kaushik, 'Environment Reporting and Disclosure Practices of Selected Maharatna Companies in India' (2015) IV *Asian Resonance*.

<sup>54</sup> Monika Kansal and others, 'Reporting of Corporate Social Responsibility in Central Public Sector Enterprises: A Study of Post Mandatory Regime in India' [2016] *Journal of Business Ethics*.

to address environmental and social concerns.<sup>55</sup> CPSEs need to embrace extensive work to fulfil their CSR obligations for which DPE has a significant role in the monitoring of the CSR activities.<sup>56,57</sup> In 2010, a study of CSR practices of top 500 companies revealed that only 135 were complying with CSR legislation.<sup>58</sup> Owing to several challenges in undertaking CSR, corporate need to develop robust CSR strategy and discover innovative solutions to excel in social and environmental objectives.<sup>59</sup>

The legislation was expected to play as a catalyst for the companies to adopt a more strategic approach to CSR that could generate lasting benefits to the society at large but the review led to an understanding that there was no study related to CSR policies, implementation structure and the challenges faced by companies post CSR legislation. In addition, monitoring, reporting framework and process of impact assessment did not find a place in these articles.

### **3. OBJECTIVE OF THE STUDY**

The study has been undertaken with the following objectives.

- I. To analyse CSR policies and implementation structure.
- II. To understand thematic areas, best CSR practices, and high impact projects and to identify major challenges faced in undertaking CSR activities in line with legislative requirements.
- III. To study the monitoring & reporting framework and the process of impact assessment.

### **4. METHODOLOGY**

A descriptive case study research design has been adopted for the study.<sup>60</sup> Further, the case study methodology is a preferred method in

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<sup>55</sup> Ram Kumar Mishra, Punam Singh and Shulgana Sarkar, 'Corporate Social Responsibility: Interventions of Oil and Gas Central Public Sector Enterprises in India' (2013) 2 *Journal of Business Ethics in Developing Economies*.

<sup>56</sup> Nikhil Atale and E. J. Helge, 'Proposed Framework for Government of India to Effectively Monitor Mandatory CSR Initiatives of Public Sector Enterprises in India' (2013) 20 *SSRN Electronic Journal*.

<sup>57</sup> C. Paramasivan and S. Savarimuthu, 'Corporate Social Responsibility of Ratna Status Public Sector Undertakings in India' (2015) VI *SELP Journal of Social Science*.

<sup>58</sup> Richa Gautam and Anju Singh, 'Corporate Social Responsibility Practices in India: A Study of Top 500 Companies' (2010) 2 *Global Business and Management Research: An International Journal*.

<sup>59</sup> Payal Mehendiratta, 'Going Beyond Business: A Study of Corporate Social Responsibility in India' (2014) 1 *International Journal of Research*.

<sup>60</sup> Robert K Yin, *Case Study Research: Design and Methods* (SAGE 2003).

the oil and gas sector with different objectives.<sup>61,62</sup> Each case serves as a distinct experiment that stands on its own merits as an analytic unit<sup>63</sup>; and a useful tool to analyse real business activities, projects and the social movements.<sup>64,65,66</sup> The proposed study considers the theoretical constructs such as CSR policy and processes of governance.

Information for this article has been sourced from CSR legislation, CSR policy, annual reports, sustainability reports and website of the companies, journals, on-line academic journals, newspaper reports and publications of Department of Public Enterprises (DPE), Ministry of Corporate Affairs (MCA and Standing Conference of Public Enterprises (SCOPE). Besides, a semi-structured interview has been conducted with the CSR team members of the company to obtain first-hand information. For the present study, data on CSR spending from the financial year 2014-15 till 2016-17 has been considered.

## **5. DECIPHERING THE SECTION 135 OF THE COMPANIES ACT, 2013 AND COMPANIES (CSR POLICY) RULES, 2014**

### **5.1 Governance Structure and Framework for CSR Policy**

The law states that every company covered under Section 135(1) of the Companies Act, 2013 should mandatorily constitute a Corporate Social Responsibility Committee of the Board. This committee must consist of three or more directors, out of which at least one director should be an independent director.<sup>67</sup> The unlisted public companies or private companies covered under the Act are not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act and constitute its CSR Committee without such director and a private company having two directors on Board can constitute its CSR Committee with only two directors.<sup>68</sup> This legislation applies also to foreign companies having their branches or project offices in India. In case of foreign companies coming

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<sup>61</sup> Rajesh Kumar and Tore Markeset, 'Development of Performance-Based Service Strategies for the Oil and Gas Industry: A Case Study' (2007) 22 *Journal of Business & Industrial Marketing*.

<sup>62</sup> S Matos and J Hall, 'Integrating Sustainable Development in the Supply Chain: The Case of Life Cycle Assessment in Oil and Gas and Agricultural Biotechnology' (2007) 25 *Journal of Operations Management*.

<sup>63</sup> Kathleen M. Eisenhardt and Melissa E. Graebner, 'Theory Building from Cases: Opportunities and Challenges' (2007) 50 *Academy of Management Journal*.

<sup>64</sup> Robert E. Stake, 'The Case Study Method in Social Inquiry' (1978) 7 *Educational Researcher*.

<sup>65</sup> Martyn Hammersley, Peter Foster and Roger Gomm, *Case Study Method* (SAGE 2000).

<sup>66</sup> Gulzhan Buldybayeva, 'Both Sides of CSR Practice: A Case From Oil and Gas Industry in Kazakhstan' (2014) 11 *Acta Polytechnica Hungarica*.

<sup>67</sup> Companies Act 2013, s 135(1).

<sup>68</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 5(1)(i).



under the ambit of CSR provisions, the CSR Committee shall comprise of at least two people of which one person should be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person should be nominated by the foreign company.<sup>69</sup> According to the legal provisions, the composition of the Corporate Social Responsibility Committee must be disclosed in the Board's report and company's website, if any, under sub-section (3) of section 134.<sup>70</sup>

However, every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years is exempted from forming the CSR Committee and such companies are not required to comply with the provisions contained in sub-section (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.<sup>71</sup>

The statute has set out the responsibility of the Corporate Social Responsibility Committee of the board.<sup>72</sup> The Act states that the CSR Committee will be responsible for formulating the CSR Responsibility Policy which will contain activities to be undertaken by the company according to the Schedule VII of the statute.<sup>73</sup> The CSR Committee will recommend the policy and amount of expenditure to be incurred on the activities to the Board and monitor the CSR policy of the company from time to time.<sup>74</sup> The responsibilities of the Board are mentioned under the sub-section (4) which states that the Board of every company covered under the Act is responsible for approving the CSR policy of the company after considering the recommendations made by the CSR committee. The Act also necessitates the Board to disclose the content of the CSR policy in its report and place it on company's website, if any.<sup>75</sup>

Companies (CSR Policy) Rules, 2014 defines CSR as projects or programs relating to activities specified in Schedule VII to the Act<sup>76</sup> while relate "CSR Policy" to the activities to be undertaken by the company mentioned under Schedule VII of the statute and the expenditure thereon.<sup>77</sup> The CSR policy should include a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act.<sup>78</sup> It should also specify the modalities of execution of such projects and programs and implementation schedule for the same.<sup>79</sup> The

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<sup>69</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 5(1)(iii).

<sup>70</sup> Companies Act 2013, s 134(3).

<sup>71</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rules 3(2)(a) and 3(2)(b).

<sup>72</sup> Companies Act 2013, s 135(3).

<sup>73</sup> Companies Act 2013, s 135(3)(a).

<sup>74</sup> Companies Act 2013, ss 135(3)(a) and 135(3)(b).

<sup>75</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 9.

<sup>76</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 2(1)(c).

<sup>77</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 2(1)(e).

<sup>78</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 1(a).

<sup>79</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 6(1)(a).

CSR Policy shall also elaborate the monitoring process for such projects or programs.<sup>80</sup> The CSR Policy of a company would include, among others, the company's vision about CSR; projects/programs envisaged to be undertaken by the companies under CSR; amount allocated for each of those projects/programs; implementation schedules; indication about the implementing agency/agencies for executing such projects, modalities of monitoring the implementation of CSR projects, and provisions for impact evaluation. The CSR Policy of the company should also specify that the surplus arising out of the CSR projects or programs or activities is not forming part of the business profit of a company.<sup>81</sup>

All the *Maharatna* enterprises have framed their CSR policy in adherence to the provisions of the CSR legislation; however, there are a few distinctive features of the governance structure of each of the company which is worth discussing. A three-tier CSR structure has been constituted in BHEL, NTPC, and GAIL which is instrumental in screening, review, selection, recommendation and approval of CSR projects.<sup>82,83,84</sup> At BHEL, a Board level committee (BLC) is supported by a Level 1 and Level 2 committee while at the Unit level; the Unit Head is the Nodal officer for CSR programmes. He is responsible for approving constitution/reconstitution of Unit Level Committee for CSR. A similar structure exists at Corporate, Regional and Station level in NTPC with a separate Board Level Committee on CSR. Various level of employees and top management are involved in the project identification, execution and monitoring at GAIL. CIL, on the other hand, has a two-tier CSR committee. The CSR projects are examined by the executives below the board level who recommend it to the Board Level Committee for further deliberation and approval.<sup>85</sup> IOCL has constituted a CSR committee to execute CSR activities. A dedicated cell has been created to specifically plan and monitor/coordinate CSR interventions.<sup>86</sup> ONGC has a CSR and Sustainable Development committee headed by an independent director.<sup>87</sup> The CSR activities are implemented

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<sup>80</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 6(1)(b).

<sup>81</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 6(2).

<sup>82</sup> BHEL, 'Corporate Social Responsibility (CSR) Policy' (*Bhel.com*, 2014) <<http://www.bhel.com/CSR/pdf/BHEL-CSR-Policy-December-2014.pdf>> accessed 20 September 2016.

<sup>83</sup> NTPC Ltd., 'NTPC Policy for CSR & Sustainability' (*Ntpc.co.in*, 2014) <<https://www.ntpc.co.in/download/ntpc-policy-csr-sustainability>> accessed 20 September 2016.

<sup>84</sup> GAIL (India) Ltd., 'GAIL – Hriday Corporate with a Heart' (*Gailonline.com*, 2015) <[http://www.gailonline.com/final\\_site/pdf/CSR/final\\_policy2010.pdf](http://www.gailonline.com/final_site/pdf/CSR/final_policy2010.pdf)> accessed 20 September 2016.

<sup>85</sup> Coal India Ltd., 'CIL's Policy for Corporate Social Responsibility (CSR)' (*Coalindia.in*, 2014) <[https://www.coalindia.in/DesktopModules/DocumentList/documents/CIL\\_CSR\\_Policy\\_New\\_Companies\\_Act\\_2013\\_05022016.pdf](https://www.coalindia.in/DesktopModules/DocumentList/documents/CIL_CSR_Policy_New_Companies_Act_2013_05022016.pdf)> accessed 20 September 2016.

<sup>86</sup> Indian Oil Corporation Ltd., 'Policy on Corporate Social Responsibility' (*iocl.com*, 2014) <[https://www.iocl.com/Aboutus/IndianOil\\_CSR\\_Policy.pdf](https://www.iocl.com/Aboutus/IndianOil_CSR_Policy.pdf)> accessed 20 September 2016.

<sup>87</sup> Oil and Natural Gas Corporation Ltd., 'CSR and Sustainability Policy – 2014' (*Ongcindia.com*, 2014) <[https://www.ongcindia.com/wps/wcm/connect/f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf/ONGC\\_CSRSDpolicy.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf-m0RSmQU](https://www.ongcindia.com/wps/wcm/connect/f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf/ONGC_CSRSDpolicy.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf-m0RSmQU)> accessed 20 September 2016.



by the Director (Human Resource) at the corporate and the unit level. In SAIL, a Board Level Committee along with a cross-functional high-level committee called the “CSR Apex Group” comprising of senior officers of the rank of Executive Directors and General Managers from various disciplines has been formed. A High-Power Committees at the Plants/Units implement, supervise and monitor the projects.<sup>88</sup>

## 5.2 Geographical Preference for CSR Spend

According to the sub-section (5) of section 135, a company should give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.<sup>89</sup> The logic behind the proviso is that the local communities are affected the most by the externalities of operations of companies, especially by the operations of manufacturing units. Extraction of local resources and environmental pollution has adverse effect on the health and livelihood of the local communities. Therefore, the companies require social permission from the local communities to operate<sup>90</sup>. Moreover, spending in local communities reduce the cost of project implementation and save time and energy.

Most of the public-sector enterprises in India have been set-up in the backward areas/regions/districts to drive rural development and social welfare<sup>91</sup>. The PSEs had been entrusted the important role of driving economic growth, promoting and social justice, removing regional disparities through equitable development to realise the egalitarian aspirations of the society, though profitability has become important post economic reforms.

*Maharatna* companies give preference to local areas in their CSR activities; some have even set-up geographical boundaries for the same. CIL identifies Land Oustees - Project Affected Persons (PAPs) - as major beneficiaries of its CSR activities. Being a holding company, having subsidiaries all over India, CIL undertakes CSR initiatives pan India. In case of subsidiaries, 80% of the CSR budget is spent within a radius of 25 km from the projects/mines including headquarters. Remaining 20% is assigned to the state in which the subsidiary companies work.<sup>92</sup> Similarly, SAIL spends at least 80% of annual

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<sup>88</sup> Steel Authority of India Limited, ‘Corporate Social Responsibility Policy’ (*Sail.co.in*, 2014) <<https://sail.co.in/sites/default/files/sail-pages/company/csrpolicy.pdf>> accessed 20 September 2016.

<sup>89</sup> Companies Act 2013, s 135(5).

<sup>90</sup> ‘What is the Social Licence to Operate (SLO)?’ (*MiningFacts.org*, 2018) <<http://www.miningfacts.org/communities/what-is-the-social-licence-to-operate/>> accessed 28 April 2018.

<sup>91</sup> Sundarapandian Vaidyanathan and Vidya Sundar, ‘The Role of Public Sector Enterprises in Rural Development and Social Welfare’ (2011) 2 *International Journal of Managing Public Sector Information and Communication Technologies*.

<sup>92</sup> Coal India Ltd., ‘CIL’s Policy for Corporate Social Responsibility (CSR)’ (*Coalindia.in*, 2014) <[https://www.coalindia.in/DesktopModules/DocumentList/documents/CIL\\_CSR\\_Policy\\_New\\_Companies\\_Act\\_2013\\_05022016.pdf](https://www.coalindia.in/DesktopModules/DocumentList/documents/CIL_CSR_Policy_New_Companies_Act_2013_05022016.pdf)> accessed 20 September 2016.

CSR budget in areas/direct impact zone of its Plants and Units.<sup>93</sup> GAIL and BHEL allocate at least 75% of the CSR budget by value within local regions (a radius of 100 Km).<sup>94,95</sup> NTPC, IOCL and ONGC, too, prefer local areas to spend the majority of its CSR funds but have not characterised any geographical limits<sup>96,97,98</sup>; the unverified hypothesis could be that such a move allows the companies to serve underserved regions not only in its vicinity but across India. Rather it appears to be more strategic as the possibility of scaling the projects is high. In fact, the legislation itself has not mandated the companies to define geographical boundaries but has recommended them to prefer local areas. The authority vests with the board to decide the location where the company wants to undertake CSR interventions.

### 5.3 Community Engagement

The sustainability of enterprises is partly dependent on maintaining trust with the local communities<sup>99</sup>. In most of the *Maharatnas*, the onus of community engagement rests with the implementation partners. The subsection (5) of section 135 opens door for the companies to engage with local communities by encouraging the companies to prefer local areas for their CSR activities.<sup>100</sup> Community participation in BHEL, GAIL, and IOCL is not only encouraged during planning, implementation, monitoring and impact evaluation of a projects but also during information dissemination, awareness campaigns and capacity building programmes. In ONGC, the strategic business units identify and engage with relevant stakeholders. A communication policy for stakeholder engagement has been created to substantiate stakeholder engagement for business value creation to achieve the triple bottom line.

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<sup>93</sup> Steel Authority of India Limited, 'Corporate Social Responsibility Policy' (*Sail.co.in*, 2014) <<https://sail.co.in/sites/default/files/sail-pages/company/csrrpolicy.pdf>> accessed 20 September 2016.

<sup>94</sup> GAIL (India) Ltd., 'GAIL – Hriday Corporate with a Heart' (*Gailonline.com*, 2015) <[http://www.gailonline.com/final\\_site/pdf/CSR/final\\_policy2010.pdf](http://www.gailonline.com/final_site/pdf/CSR/final_policy2010.pdf)> accessed 20 September 2016.

<sup>95</sup> BHEL, 'Corporate Social Responsibility (CSR) Policy' (*Bhel.com*, 2014) <<http://www.bhel.com/CSR/pdf/BHEL-CSR-Policy-December-2014.pdf>> accessed 20 September 2016.

<sup>96</sup> NTPC Ltd., 'NTPC Policy for CSR & Sustainability' (*Ntpc.co.in*, 2014) <<https://www.ntpc.co.in/download/ntpc-policy-csr-sustainability>> accessed 20 September 2016.

<sup>97</sup> Indian Oil Corporation Ltd., 'Policy on Corporate Social Responsibility' (*Iocl.com*, 2014) <[https://www.iocl.com/Aboutus/IndianOil\\_CSR\\_Policy.pdf](https://www.iocl.com/Aboutus/IndianOil_CSR_Policy.pdf)> accessed 20 September 2016.

<sup>98</sup> Oil and Natural Gas Corporation Ltd., 'CSR and Sustainability Policy – 2014' (*Ongcindia.com*, 2014) <[https://www.ongcindia.com/wps/wcm/connect/f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf/ONGC\\_CSRSdpolicy.pdf?MOD=AJPERES&CA-CHEID=ROOTWORKSPACE-f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf-m0RSmQU](https://www.ongcindia.com/wps/wcm/connect/f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf/ONGC_CSRSdpolicy.pdf?MOD=AJPERES&CA-CHEID=ROOTWORKSPACE-f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf-m0RSmQU)> accessed 20 September 2016.

<sup>99</sup> Svenskt Näringsliv, *The Role of Business in Society* (Confederation of Swedish Enterprise 2004) <[https://www.svensktnaringsliv.se/migration\\_catalog/the-role-of-business-in-society\\_532870.html/BINARY/The%20role%20of%20business%20in%20society](https://www.svensktnaringsliv.se/migration_catalog/the-role-of-business-in-society_532870.html/BINARY/The%20role%20of%20business%20in%20society)> accessed 28 April 2018.

<sup>100</sup> Companies Act 2013, s 135(5).

NTPC engages with the community through the Village Development Advisory Committee (VDAC) comprising representatives from the district administration, local authority, Panchayats/ NGOs & officials of NTPC. Further, Quality Circles have been formed in villages with the premise that community should themselves identify the problems and find out solutions. At SAIL, both formal and informal mode is used for community engagement that involves dialogues with the Sarpanch/ Panch/village representatives of the peripheral villages as and when required about the peripheral developmental activities. Also, reforms/updates of the processes based on the feedback received from the beneficiaries are incorporated so that the sense of ownership is generated among the community.

Despite all this, the community engagement framework of these companies appears to be ineffective which is evident from the hurdles created by the local community in the implementation of CSR activities. GAIL was not allowed by the members of the management committee and teachers of a village school to construct toilets who demanded the company to first drill a deep bore well in the school campus.<sup>101</sup> Despite the involvement of the implementing partners by the public-sector enterprises (PSEs), the communication gap is widespread between the enterprises and communities.<sup>102</sup> Therefore, to make the CSR implementation more effective, these companies need to develop a robust participatory mechanism. Periodic meeting with the community members and involving them in planning and implementation of CSR initiatives will help the companies in building rapport with the community and develop a sense of ownership among them about the assets created, thereby, ensuring sustainability of CSR activities. To attain this, a Community Development Committee comprising company officials and indigenous and local individuals can be formed. The projects and programmes should be designed based on expressed needs of people having wider community acceptance and sustained impact.

#### **5.4 Employees' Involvement**

The legal provision recognizes that contribution and involvement of employees in CSR activities of the company will generate interest and pride. Companies, therefore, encourage involving their employees in CSR activities. The law prohibits monetization of pro bono services of employees;

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<sup>101</sup> Subhashish Mohanty, 'Dirty Tricks Trip Toilet Job' (*The Telegraph*, 2015) <[https://www.telegraphindia.com/1151010/jsp/frontpage/story\\_47192.jsp#.WlB6kFz7DIU](https://www.telegraphindia.com/1151010/jsp/frontpage/story_47192.jsp#.WlB6kFz7DIU)> accessed 28 April 2018.

<sup>102</sup> Anil Dhaneshwar and Pooja Pandey, *Status of Corporate Social Responsibility among PSUs in India* (Centre for Science and Environment 2015) <[http://www.indiaenvironmentportal.org.in/files/file/Status%20of%20CSR%20in%20Indian%20PSUs%20\(Oil%20and%20Power%20sector\).pdf](http://www.indiaenvironmentportal.org.in/files/file/Status%20of%20CSR%20in%20Indian%20PSUs%20(Oil%20and%20Power%20sector).pdf)> accessed 17 May 2018.

valuation of their labour would not be counted towards CSR expenditure. But the High-Level Committee (HLC) constituted on 3<sup>rd</sup> February 2015 to suggest measures for improved monitoring of implementation of CSR policies by companies,<sup>103</sup> in its report submitted on 22<sup>nd</sup> September 2015, mentioned that ideally employees' contribution should be monetized and booked under CSR expenses.<sup>104</sup> This committee, however, did not recommend monetization of the services of corporate employees.

*Maharatna* companies have started several activities to engage their employees in CSR activities. BHEL organises **workshops and capacity building programmes** for employee sensitisation. **"CSR Prayas,"** an **in-house magazine of BHEL, spreads awareness among employees about CSR activities of the company.** CIL and GAIL motivate their employees to participate in regular training programmes, workshops, seminars, capacity building programmes and awareness generation projects. GAIL has also piloted GAIL Employee Engagement Programme (GEEP) in Delhi/NCR in addition to forming Ladies Club at various work centres. These clubs perform various social activities in line with CSR policy and the values of the company.<sup>105</sup> NTPC has created a formal programme; 'EVOICE' (Employee Voluntary Organizations for Initiatives in Community Development) for employees' engagement in CSR.<sup>106</sup> At most of its plants, employees have formed formal and informal organisations to undertake social work on voluntary basis. ONGC organises several brainstorming sessions such as *Vichar Dhara*, *Vichar Manthan* and Strategy Meets to create CSR awareness among its employees. Further, an e-magazine "ongcreports.net" has also been conceptualised to update employees with latest information. "Letters to the editor" column provides a platform to the employees to express their views, difficulties in operations and grievances. Project Implementation Committee (PIC), which has a fair representation of employees that looks after community centred initiatives and spearheads the project implementation. SAIL creates CSR awareness among its employees through print media, wallpapers and in-house cable TV network. In addition, regular seminars and conferences are organised. Employees are nominated for specialised external seminars and workshops CSR and a chapter on CSR has been added to the training manual. Though employees' participation is encouraged at all levels in *Maharatnas*, the information on hours spent by employees' in CSR activities is not available nor does

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<sup>103</sup> Press Information Bureau, 'High Level Committee on Corporate Social Responsibility (CSR)' (Ministry of Corporate Affairs 2015).

<sup>104</sup> Ministry of Corporate Affairs, 'Report of the High Level Committee' (Ministry of Corporate Affairs 2015).

<sup>105</sup> GAIL (India) Ltd., 'GAIL – Hriday Corporate with a Heart' (*Gailonline.com*, 2015) <[http://www.gailonline.com/final\\_site/pdf/CSR/final\\_policy2010.pdf](http://www.gailonline.com/final_site/pdf/CSR/final_policy2010.pdf)> accessed 20 September 2016.

<sup>106</sup> NTPC Ltd., 'NTPC Policy for CSR & Sustainability' (*Ntpc.co.in*, 2014) <<https://www.ntpc.co.in/download/ntpc-policy-csr-sustainability>> accessed 20 September 2016.

the Act requires this, amount spent in terms of employee hours on CSR activities can be used by the company for image building.

## 6. PLANNING AND IMPLEMENTATION

### 6.1 Identification of CSR Activities: Schedule VII of the Companies Act, 2013

The sub-section (5) of section 135 instructs the companies to choose CSR activities as mentioned under the Schedule VII of the Companies Act, 2013.<sup>107</sup> Since its enactment, Schedule VII has been amended several times by the MCA to include newer activities. Initially, there were 10 developmental activities that were listed under the Schedule. Eleventh activity “slum area development” was added to the Schedule vide Notification Number GSR 568(E) dated 6<sup>th</sup> August 2014.<sup>108</sup> Furthermore, “*Swachh Bharat Kosh*” and “Clean Ganga Fund” set-up by the Central Government were added to item (i) and item (iv) of Schedule VII, vide notification GSR 741(E) dated 24<sup>th</sup> October 2014.<sup>109</sup> The activities mentioned under the Schedule VII include:

- i. Eradicating hunger, poverty and malnutrition, promoting health-care including preventive care and sanitation including contribution to the *Swachh Bharat Kosh* set up by the central government for the promotion of sanitation<sup>110</sup> and making available safe drinking water;
- ii. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently-abled and livelihood enhancement projects;
- iii. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans, setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- iv. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air, water including contribution to the Clean Ganga Fund set up by the central government for rejuvenation of river Ganga.<sup>111</sup>

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<sup>107</sup> Companies Act 2013, s 135(5).

<sup>108</sup> Ministry of Corporate Affairs, ‘Amendment Notification G.S.R. 568(E)’ (Ministry of Corporate Affairs 2014).

<sup>109</sup> Ministry of Corporate Affairs, ‘Amendment Notification G.S.R. 741(E)’ (Ministry of Corporate Affairs 2014).

<sup>110</sup> Ministry of Corporate Affairs, ‘Amendment Notification G.S.R. 741(E)’ (Ministry of Corporate Affairs 2014).

<sup>111</sup> Ministry of Corporate Affairs, ‘Amendment Notification G.S.R. 741(E)’ (Ministry of Corporate Affairs 2014).

- v. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicrafts;
- vi. Measures for the benefit of armed forces veterans, war widows and their dependents;
- vii. Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports;
- viii. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the central government for socioeconomic development and relief and welfare of the scheduled castes, the scheduled tribes, other backward classes, minorities and women;
- ix. Contributions or funds provided to technology incubators located within academic institutions which are approved by the central government;
- x. Rural development projects;
- xi. Slum area development.<sup>112</sup>

The General Circular No. 21/2014 dated 18<sup>th</sup> June 2014 issued by the Ministry of Corporate Affairs provides clarifications on the CSR provisions. The Circular suggest that the corporates should capture the essence of the subjects enumerated Schedule VII by interpreting the same liberally.<sup>113</sup> It, further, states that the activities mentioned under Schedule VII are broad based and intended to cover a wide range of developmental activities. It also clarifies that one-off event such as marathons/awards/charitable contributions/advertisements/sponsorships of TV programmes would not qualify as CSR. According to the Circular, a company may supplement and complement government schemes but should not duplicate the government programs.

Rule 4(1) of Companies CSR Rules, 2014 mention that a company should undertake CSR activities as per its stated CSR Policy, as projects or programs or activities (either new or on-going).<sup>114</sup> By emphasizing on the project or program mode approach, the Act envisages long-term commitment from the companies in addressing the societal issues which are not "quick fix". Clause (b) of sub-section (4) of section 135 prescribes the Board of the company to ensure that activities mentioned under the CSR policy of the company are undertaken by it.<sup>115</sup> Further, under Rule 4(5) the

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<sup>112</sup> Ministry of Corporate Affairs, 'Amendment Notification G.S.R. 568(E)' (Ministry of Corporate Affairs 2014).

<sup>113</sup> Ministry of Corporate Affairs, 'General Circular No. 21/2014: Clarifications With Regard To Provisions of Corporate Social Responsibility under Section 135 of the Companies Act, 2013' (Ministry of Corporate Affairs 2014).

<sup>114</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 4(1).

<sup>115</sup> Companies Act 2013, s 135(4)(b).



CSR projects or programs or activities that benefit only the employees of the company and their families shall be not be regarded as CSR activities under the Act.<sup>116</sup> The law clearly maintains that the CSR funds are only for the public welfare and not for the internal stakeholders of the company.

The CSR project/programmes are identified by all the *Maharatna* enterprises through need assessment, in-house expertise, the request from local communities, proposals from government bodies and projects received from specialised agencies. These projects are implemented either directly or outsourced to specialised agencies such as NGOs, academic institutions, local governments, corporate foundations and so forth.

At BHEL, the expenditure incurred on need assessment study is booked under the administrative expenditure limit of 5% of overall annual CSR budget. Also, priority is given to proposals received from Govt. Agencies/ CPSEs/ Trusts/ Societies. The proposals falling beyond the local areas are routed through the relevant Unit(s) the corporate office.<sup>117</sup> Baseline study at CIL is conducted for projects costing more than ten million rupees. CSR committee reviews all the CSR proposals with cost-benefit analysis. Presently, Tata Institute of Social Sciences (TISS) examine the CSR proposals on behalf of the company.<sup>118</sup> Based on the recommendations provided by company executives, CSR projects/ programmes/ activities are discussed in CSR committee before it is sent to the competent authority for approval. The CSR investments at CIL are made in project-based mode and the activities are implemented by specialised agencies. CIL has signed a MoU with TISS, a National CSR hub for implementation of its CSR activities.

GAIL emphasizes on need assessment for planning CSR projects. Besides corporate-level CSR committee, three dedicated CSR units exist at Petrochemical Complex at PATA, LPG unit at Vijayanagar and pipeline unit in East Godavari. Projects received from these units are reviewed by the corporate level committee for approval. GAIL considers requests from NGOs and local communities. GAIL Charitable and Education Trust implements social initiative of the company. The type of projects includes Short-term (6 months to 1 year); Medium term (1 to 2 years); and Long-Term Flagship programmes (2 years and above).<sup>119</sup> At IOCL, CSR activities are identified through need assessment and implemented in project mode by in-house teams, foundations, NGO's,

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<sup>116</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 4(5).

<sup>117</sup> BHEL, 'Corporate Social Responsibility (CSR) Policy' (*Bhel.com*, 2014) <<http://www.bhel.com/CSR/pdf/BHEL-CSR-Policy-December-2014.pdf>> accessed 19 September 2016.

<sup>118</sup> Coal India Ltd., 'CIL's Policy for Corporate Social Responsibility (CSR)' (*Coalindia.in*, 2016) <[https://www.coalindia.in/DesktopModules/DocumentList/documents/CIL\\_CSR\\_Policy\\_New\\_Companies\\_Act\\_2013\\_05022016.pdf](https://www.coalindia.in/DesktopModules/DocumentList/documents/CIL_CSR_Policy_New_Companies_Act_2013_05022016.pdf)> accessed 20 September 2016.

<sup>119</sup> GAIL (India) Ltd., 'GAIL – Hriday Corporate with a Heart' (*Gailonline.com*, 2015) <[http://www.gailonline.com/final\\_site/pdf/CSR/final\\_policy2010.pdf](http://www.gailonline.com/final_site/pdf/CSR/final_policy2010.pdf)> accessed 20 September 2016.

third-party vendors and Government agencies.<sup>120</sup> ONGC puts up all projects, received in the corporate CSR group, to the screening committee. The screening committee constituted by Director (HR) consist of one representative each from HR, Finance and CSR groups. Screening committee meets every month to examine the proposals submitted to it and presents the recommendation to Chief of CSR. Proposals approved by Chief of CSR are developed further into CSR projects with clearly defined milestones, implementation and monitoring methodologies. CSR projects/programmes are implemented through in-house CSR team or ONGC Foundation or by any specialised agencies.<sup>121</sup>

NTPC has adopted a bottom-up approach for its CSR planning. It has been engaged in community welfare initiatives for a long time and thus, had Initial Community Development (ICD) policy, R&R policy and CSR-CD policy even before CSR legislation. The ICD Policy serves as a guide at the project inception. The Resettlement & Rehabilitation (R&R) Policy guides envisioning Community Development during project development and Community Development activities. During the operational phase, they are guided by CSR-Community Development (CSR-CD) Policy. Identified CSR activities are reviewed at two stages -regional board committee level and finally approved by the board. All CSR projects with clearly defined deliverables and strict timelines are implemented through specialised and experienced agencies and Employee Volunteering Organizations (EVOICE), NTPC Foundation, Trusts, Self Help Groups, Professional Consultancy Organizations and Contracting Agencies<sup>122</sup>.

CSR activities at SAIL are centred on the idea of creating “Shared Value”<sup>123</sup>. CSR projects/activities at Plant & Units/ Corporate level are identified by any one or combination of in-house planned projects, a proposal from the district administration, local government and public representatives. However, activities for these are carried out under project mode. A committee headed by Executive Director and General Managers at SAIL recommends CSR projects to be undertaken at a plant or unit. This committee also monitors the implementation and progress of the projects and ensure audits of CSR initiatives. The CSR Apex Group assesses the performance of the agency concerning value for money.

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<sup>120</sup> Indian Oil Corporation Ltd., ‘Policy on Corporate Social Responsibility’ (*Iocl.com*, 2018) <[https://www.iocl.com/Aboutus/IndianOil\\_CSR\\_Policy.pdf](https://www.iocl.com/Aboutus/IndianOil_CSR_Policy.pdf)> accessed 20 September 2016.

<sup>121</sup> Oil and Natural Gas Corporation Ltd., ‘CSR and Sustainability Policy – 2014’ (*Ongcindia.com*, 2014) <[https://www.ongcindia.com/wps/wcm/connect/f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf-m0RSmQU](https://www.ongcindia.com/wps/wcm/connect/f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf/ONGC_CSRSdpolicy.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-f857b9b9-d0e1-41c5-a5e8-abbfc1a5f2cf-m0RSmQU)> accessed 20 September 2016.

<sup>122</sup> NTPC Ltd., ‘NTPC Policy for CSR & Sustainability’ (*Ntpc.co.in*, 2014) <<https://www.ntpc.co.in/download/ntpc-policy-csr-sustainability>> accessed 20 September 2016.

<sup>123</sup> Steel Authority of India Limited, ‘Corporate Social Responsibility Policy’ (*Sail.co.in*, 2014) <<https://sail.co.in/sites/default/files/sail-pages/company/csrpolicy.pdf>> accessed 20 September 2016.



Although, all *Maharatna* companies claim that their CSR activities are implemented either under the project or programme mode, the analysis shows that one-off events constitute a major portion of these initiatives. For instance, distribution of sweaters, blankets, school bags and uniforms are some of common activities undertaken by NTPC. BHEL has also undertaken distribution of school uniform and organised blood donation camps. ONGC has contributed a huge chunk of its CSR budget to construction of Statue of Unity, a political symbolic project of the central government. The impact of such activities, to a large extent, is either symbolic or limited to the number of foot falls during a camp rather than sustainable impact.

## **6.2 Implementation of CSR Projects and Programs**

Rule 4(2) of the Companies CSR Rules, 2014 allows a company to undertake its CSR activities through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under Section 8 of the Act. However, if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it should have an established track record of three years in undertaking similar programs or projects.<sup>124</sup> Further, the company should specify the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism. The partnership of corporate with NGOs may be symbiotic where both the partners can complement each other to create a win-win situation. Such relationships can allow the corporates to harness the knowledge and experience of NGOs in development sector while the NGOs can leverage resources from the corporates. However, due to persistent trust deficit of NGOs the corporates face difficulties in identifying credible implementing agencies.

As stated under Rule 4(3) a company may also collaborate with other companies for undertaking projects or programs or CSR activities provided CSR Committees of respective companies are able to report separately on such projects or programs in accordance with these rules.<sup>125</sup> The collaboration clause is especially helpful for the companies who have small CSR budgets making them unable to undertake long-term projects or programs. In addition, the rules permit the companies to leverage resources of other corporate units to scale the CSR projects.

*Maharatna* companies have adopted a mixed approach for CSR implementation, the activities being implemented directly by the companies themselves, through their Foundations and through external implement-

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<sup>124</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 4(2).

<sup>125</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 4(3).

ing agencies. Despite this, several challenges are faced by these companies in the implementation of CSR projects. Diktats from government and pressure from influence groups such as local MP, MLA and district administration are major hurdles in project planning and implementation. Recently, the oil and gas sector PSUs have been directed by the Ministry of Petroleum, Government of India to pay at least INR 2 billion (€ 24.92 million) for the Statue of Unity. Specifically, GAIL, ONGC and IOCL have been instructed to allocate half a billion each out of CSR budgets.<sup>126</sup> Thus, CSR, in PSUs, is losing face which has wider repercussions. MCA's vide notification No. 01/2016 12<sup>th</sup> dated January 2016 clarifies that the Board and CSR Committee of a company have the sole authority for approving and implementing the CSR projects and programs and that the government has no role to play in this regard has become infructuous. The notification also states that changes, if any, in the projects or programs should be undertaken only with the approval of the CSR Committee and Board of the company. It further mentions that CSR should not be interpreted as a source of financing the resource gaps in the Government scheme and should not be used as a source of funding government schemes and that the Board of the eligible company is competent to take decision on supplementing any Government Scheme provided it permits corporates participation and all provisions of Section 135 of the Act and rules thereunder are compiled by the company.<sup>127</sup> The spirit of the legislation was the use of corporate innovations and management expertise in the delivery of 'public goods' through CSR implementation. Such instructions adversely affect the entire planning and implementation of CSR activities. Especially the interventions under project or programmes mode are spread across at least 3-5 years and require periodic allocation of resources, one year after the other. There may be a shortfall in the allocated budget for existing projects/ programmes which may lead to delay or discontinuation of the projects and the budget spent earlier may get wasted. Even worse, the CSR staff of the companies and implementing partners may get demotivated.

Secondly, deep-rooted corruption at local level poses major challenge in the execution of CSR activities.<sup>128</sup> GAIL faced demands for money from village *Sarpanchs* (elected representative of the village), who even tried to obstruct the work. In several incidents, the villagers even damaged the public utilities constructed by the companies and then complained that the quality of infrastructure created by the company was poor. Also,

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<sup>126</sup> Amitav Ranjan, 'For Sardar Patel Statue, Oil PSUs are 'Directed' to Pay Rs 200 Crore' (*The Indian Express*, 2017) <<https://indianexpress.com/article/india/for-sardar-patel-statue-oil-psus-are-directed-to-pay-rs-200-crore-4690888/>> accessed 28 April 2018.

<sup>127</sup> Ministry of Corporate Affairs, 'Frequently Asked Questions (FAQs) With Regard to Corporate Social Responsibility under the Section 135 of the Companies Act, 2013' (Ministry of Corporate Affairs 2016).

<sup>128</sup> Subhashish Mohanty, 'Dirty Tricks Trip Toilet Job' (*The Telegraph*, 2015) <[https://www.telegraphindia.com/1151010/jsp/frontpage/story\\_47192.jsp#.W1b6kFz7DIU](https://www.telegraphindia.com/1151010/jsp/frontpage/story_47192.jsp#.W1b6kFz7DIU)> accessed 28 April 2018.

increasing expectations and demands of local communities and institutions are hard to manage; in one instance, one the companies faced ire of villagers who asked the company to fill up an empty pond with sand before initiating work for building the toilets. Here, the local government needs to play an essential role to create an enabling environment for the smooth implementation of CSR projects.

## **7. CSR EXPENDITURE AND TRENDS IN CSR SPENDING BY MAHARATNA COMPANIES BEFORE AND AFTER THE LEGISLATIVE CSR**

Sub-section (5) of section 135 specifically mentions that the Board of the company is responsible for ensuring the stipulated spending and if the company fails to spend stipulated amount on CSR activities, the Board must, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending or under spending the amount.<sup>129</sup> Hence, as per the law, spending on CSR is still not mandatory but disclosure of the expenditure incurred on different CSR activities or the reasons for under spending or not spending the required percentage of net profit is necessary. The clarification on CSR legislation empowers the Board of the company to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year. But any excess amount spent cannot be carried forwards to the subsequent years and adjusted against that year's CSR expenditure<sup>130</sup>. Although there are no penal provisions for not spending required amount on CSR activities, but if a company contravenes the provisions of clause (o) of sub - section (3) of section 134, the company can be punished with fine which shall not be less than fifty thousand rupees (€ 623.12) which may extend to INR 2.5 million (€ 31155.84). Further, every officer of the company, who is in default, can be punished with imprisonment for a term which may extend to three years or with fine which cannot be less than fifty thousand rupees which may extend to INR 0.5 million (€ 6231.17) or with both.<sup>131</sup>

The companies are instructed to calculate the "average net profit" according to the provisions of section 198 of the Act.<sup>132</sup> "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act.<sup>133</sup> Rule 2(f) states that any profit arising from any overseas branch or branches of the company, whether

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<sup>129</sup> Companies Act 2013, s 135(5).

<sup>130</sup> Ministry of Corporate Affairs, 'Frequently Asked Questions (FAQs) With Regard to Corporate Social Responsibility under the Section 135 of the Companies Act, 2013' (Ministry of Corporate Affairs 2016).

<sup>131</sup> Companies Act 2013, s 134(8).

<sup>132</sup> Companies Act 2013, s 135(5).

<sup>133</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 2(f).

operated as a separate company or otherwise, will not be included in calculation of net profit. Also, any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act will not be considered for deriving net profit provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, (1 of 1956) will not be required to be re-calculated in accordance with the provisions of the Act provided further that in case of foreign companies having their branches in India, net profit needs to be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.<sup>134</sup>

The legal provisions also describe the CSR projects or programs or activities that can and cannot amount to CSR expenditure. The sub-section (5) of section 135 state that projects or programs or activities undertaken in India only can be booked under CSR Expenditure. According to MCA General Circular No. 21/2014 dated 18<sup>th</sup> June 2014, all expenditure including contribution to corpus of trusts/societies/section 8 companies, which are created exclusively for undertaking CSR activities or for purposes directly relatable to a subject covered in Schedule VII, can be factored into CSR expenditure. Moreover, the expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under this Act.<sup>135</sup> Also, Salaries paid to regular CSR staff & volunteers (in proportion to company's time spent specifically on CSR can be factored into CSR project cost; expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if expenditures are routed through Indian subsidiaries and if it is required to do so as per Section 135. Sub-rule 6 of Rule 4 of the Companies CSR Rules, 2014 which allows companies to build CSR capacity of their own personnel as well as of those of their implementing agencies. This could be through institutions with established track record of at least three years, but such expenditure shall not exceed 5 per cent of the total CSR expenditure of the company in one financial year. Further, contribution of any amount directly or indirectly to any political party under section 182 of the Act cannot be termed as CSR activity as mentioned under Rule 4(7) of the Companies (CSR Policy) Rules, 2014. Thus, the Act has curbed a possibility of CSR funds being used for the appeasement of politicians and deriving undue political favours. Rule (7) posits that CSR expenditure can not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act. As on date no specific tax exemption has been extended to expenditure in-

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<sup>134</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rules 2(f)(i) and 2(f)(ii).

<sup>135</sup> Ministry of Corporate Affairs, 'General Circular No. 21/2014: Clarifications with Regard to Provisions of Corporate Social Responsibility under Section 135 of the Companies Act, 2013' (Ministry of Corporate Affairs 2014).

curred on specified CSR activities. However, spending on some activities like contributions to Prime Minister's Relief Fund, scientific research, and rural development projects, skill development projects and agricultural extension projects, which find place in Schedule VII, enjoy tax exemptions under different sections of the Income Tax Act, 1961.

A comparative analysis has also been conducted to analyse the trend in CSR expenditure by the *Maharatna* entities before and after CSR legislation. The data on CSR spending from 2011-12 to 2013-14 and 2014-15 till 2016-17 have been considered for the analysis. In case of a few companies the data before the enactment of CSR provisions is available only for actual spending but not for the allocation. Therefore, to maintain the uniformity of data only expenditure incurred on CSR has been taken for the study while for the periods after enactment of CSR the data includes both the total budget allocated and the actual amount spent on the CSR activities.

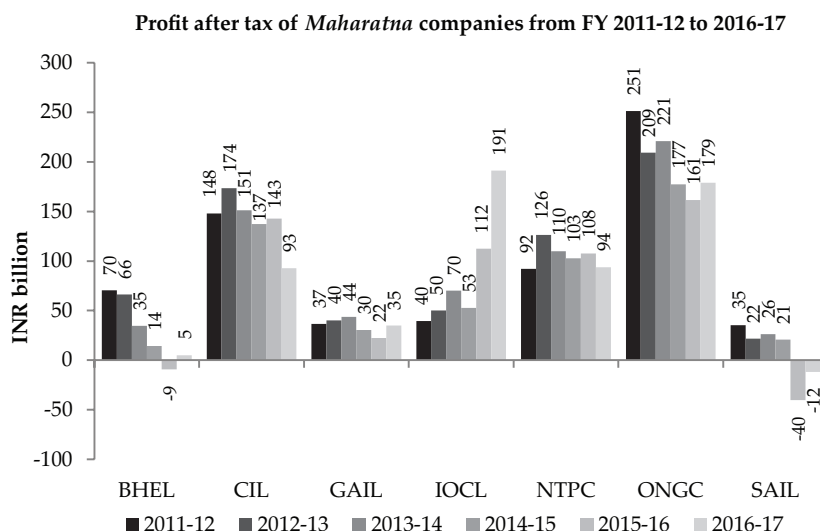
There is considerable rise in the cumulative amount spent (Table 3) by *Maharatna* companies in the three years since the enactment of the CSR. The total amount spent by these companies from 2014-15 to 2016-17 on CSR exceeds the cumulative amount spent by these enterprises from 2011-12 to 2013-14 by a massive 80.77%. The CSR spend by NTPC has almost tripled while that of IOCL and ONGC has nearly doubled. As shown in figure 4, the above figures are encouraging, especially when one considers the net profit of these companies which did not increase significantly from 2014-15 to 2016-17. IOCL was the only exception whose net profit in 2015-16 and 2016-17 rose considerably. On individual company basis, CSR spends of SAIL and CIL showed a southward trend dropping by 20.58% and 27.66% respectively. This is because the profits of these companies decreased during the period 2014-15 to 2016-17 compared to financial year 2011-12 to 2013-14. BHEL and SAIL had incurred losses in fiscal year 2015-16, while the latter also suffered losses in the next year. Since, SAIL had incurred average net loss during the three immediately preceding financial years; as per Section 135 of the Companies Act, it was not required to spend any amount on CSR during the financial year 2016-17 but the company spent a total of INR 290.5 million (€ 3.62 million) on CSR including INR 228.0 million (€ 2.84 million), unspent amount of previous year.

**Table 3:** Cumulative amount spent on CSR by Maharatna enterprises in three years before and after the Act (INR million)

Company	Total amount spent in immediately preceding three years before the Act 2011-12 to 2013-14 (A)	Total amount spent in three years after the Act 2014-15 to 2016-17 (B)	The difference in amount spent after and before the Act (B-A)	Percentage rise in cumulative spending of three years after the Act
BHEL	1764.7	1950.2	185.5	10.51%
CIL	3124.6	2260.3	-864.3	-27.66%
GAIL	1816.5	2826.9	1010.4	55.62%
IOCL	2436.1	4844.6	2408.5	98.87%
NTPC	2572.1	9747.9	7175.8	278.99%
ONGC	7239.5	14421.3	7181.8	99.20%
SAIL	1766.0	1402.5	-363.5	-20.58%
<b>Total</b>	<b>20719.5</b>	<b>37453.7</b>	<b>16734.2</b>	<b>80.77%</b>

Source: Compiled by authors from annual reports of the respective company

Figure 4



Analysis of CSR expenditure made by each company in the immediately preceding year (2013-14) the Act and the first year (2014-15) of the legislation, presented in Table 4, shows a rise in CSR expenditure of GAIL, IOCL, NTPC, and ONGC but drop for BHEL, CIL, and SAIL. The maximum surge was in spending of NTPC followed by ONGC, IOCL, and GAIL. Contrary to this, CSR spending of CIL plummeted by 74% and that of SAIL and BHEL by 44% and 6%, respectively.

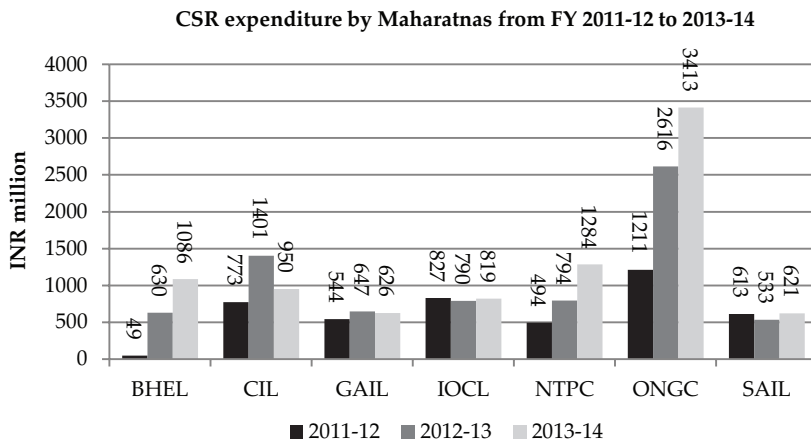
**Table 4:** Difference in CSR spending a year before and after the Act (INR million)

Company	Amount spent on CSR during 2013-14	Amount spent on CSR during 2014-15	The difference in the amount spent during the year after and before the Act	Percent increase in the CSR spent in the first year of the Act
BHEL	1086.0	1020.6	-65.4	-6%
CIL	950.0	247.2	-702.8	-74%
GAIL	625.7	718.9	93.2	15%
IOCL	819.1	1137.9	318.8	39%
NTPC	1283.5	2051.8	768.3	60%
ONGC	3413.0	4952.3	1539.3	45%
SAIL	620.6	350.4	-270.2	-44%

Source: Compiled by authors from annual reports of the respective company

Figure 5

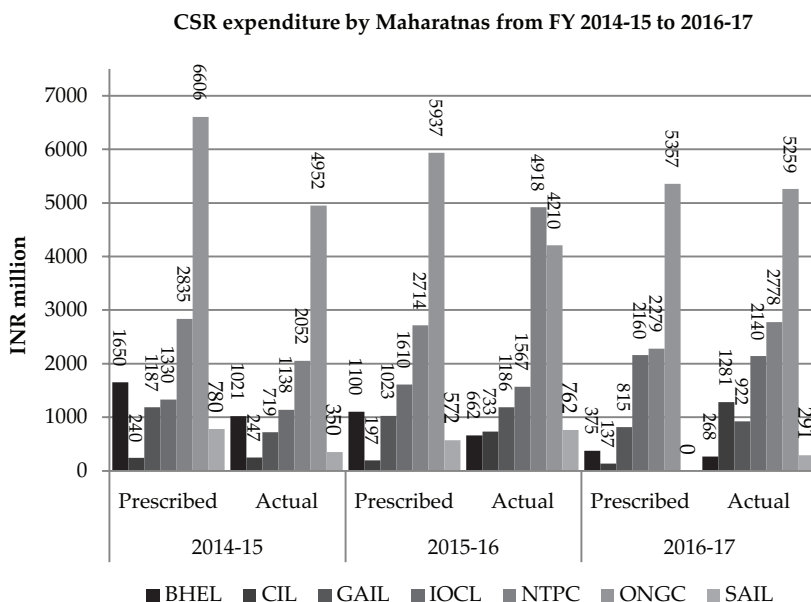
(INR million)



Source: Compiled by authors from annual reports of the respective company

Figure 6

(INR million)

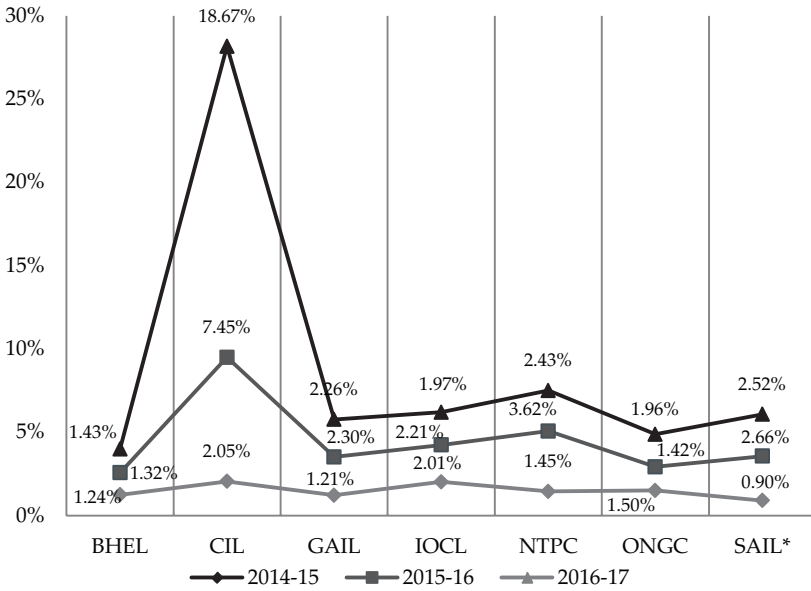


Source: Compiled by authors from annual reports of the respective company



Figure 7

**Percent of average net profit spent on CSR by Maharatnas from the financial year 2014-15 to 2016-17**



**Source:** Compiled by authors from annual reports of the respective company

\*As per Section 135 of the Companies Act, 2013, SAIL was not required to spend any amount on CSR during the financial year 2016-17 because it was incurring loss.

The amount spent by companies like BHEL, NTPC, and ONGC on corporate social responsibility was consistently on the rise before the CSR law came into effect (Figure 5). However, for other companies, it was taking a roller coaster ride. It is evident from figure 6 that CIL, and IOCL are the only companies whose spending has consistently increased from 2014-15 to 2016-17 while for the rest of the companies, it rose and fell. However, on combined basis, there remained a gap between prescribed and actual CSR expenditure after the legislation (Figure 6).

The percentage of average net profit of three immediately preceding financial years spent on CSR is depicted in figure 7. It shows that CIL is the only company which has consistently spent 2% or more of its average annual net profit. In 2016-17, it has spent a massive 18% of its net profit on CSR. However, both BHEL and ONGC have consistently fallen short of spending stipulated amount of 2% from 2014-15 to 2016-17 though in terms of INR, ONGC has spent the maximum amount during the last

three years. NTPC, GAIL and SAIL have failed to spend the stipulated percentage of net profit in 2014-15 but exceeded 2% limit in the consecutive two years. IOCL has consistently spent the requisite amount as per the CSR rules in the Act in the first two years of the enactment but slipped in the third year spending only 1.97%.

According to the companies, the reasons for under spending include longer duration projects for which funds are required at a later stage of the projects; as a result, the prescribed amount could not be spent within the year. Also, delay in approval of some projects from various government agencies delayed the spending.

A few projects could not be started due to assembly and gram panchayat elections during which a model code of conduct is imposed. Other reasons include inefficient fund utilisation due to the increased focus on monitoring rather than speeding up the projects. Further, the amount allocated for emergencies such as disaster relief remained unutilized.

In 2014-15, the first year of enactment of the CSR rules, the most common reason cited for under spending by companies is the time taken to deliberate and formulate CSR Policy and Projects/Activities. This cannot be a valid reason DPE guidelines on CSR were issued in 2010 itself i.e. four years ahead of the amendment in Companies Act. Further, many private companies spent required or more amount on their CSR initiatives despite being in the first year of the legislation. Therefore, it appears to be the result of ineffective planning and lack of commitment of the top management. The situation can be salvaged by reallocating the fund and adopting a faster decision making process.

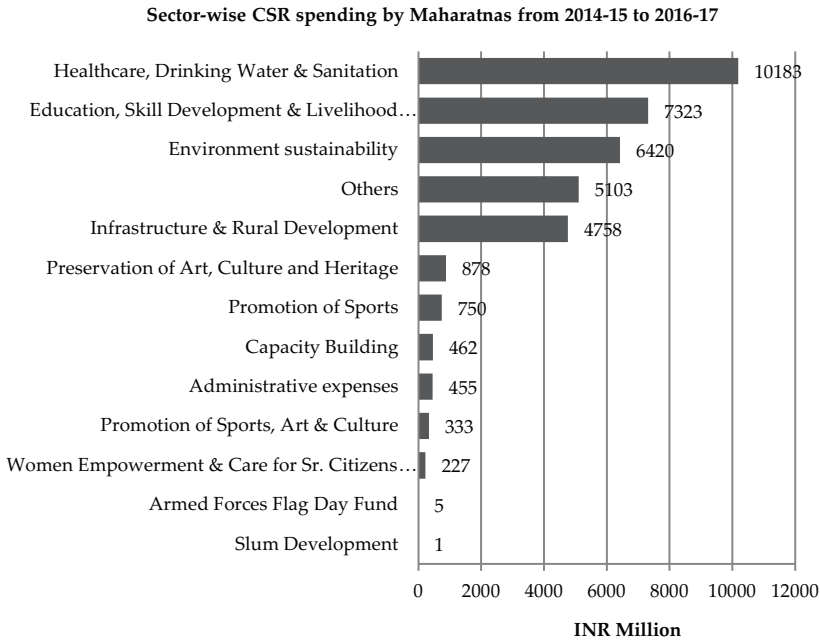
Most of the *Maharatnas* have formed a not for profit foundation after the CSR legislation came into effect. An unverified objective of creating such Foundations was to leverage financial resources from government and other development stakeholders such as multilateral and bilateral agencies. Improving inflow into CSR funds, scaling the social interventions and to some extent ensuring sustainability of CSR projects/ programmes by making them lesser dependent on annual profits of the company became possible through the foundation created. But the foundations formed by these enterprises are mostly into the implementation of CSR activities rather than leveraging resources. Moreover, there is a lack of coordination between the local governments and the companies as they are not at the same level of understanding. This makes the exchange of resources and plans a tedious and time-taking procedure.<sup>136</sup> The corporate should come up with robust management approach and explore opportunities

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<sup>136</sup> Rekha Sethi, 'CSR-Being Good is Better' (2013) XVIII Quality Times <<http://iodglobal.com/pdf/2013/dec.pdf>> accessed 17 May 2018.

**Figure 8**

(INR million)



**Source:** Compiled by authors from annual reports of the respective company

to align their CSR projects with national, state and local development programmes. Such a strategy will enable them to avoid duplication of government projects and help in dovetailing CSR funds with government schemes and scaling the impact of socially responsible investments.

## 8. SECTORAL SPENDING BY THE COMPANIES

The CSR activities undertaken by the *Maharatna* companies covers ten of the twelve activities mentioned in the Schedule VII of the Companies Act, 2013. Figure 8 depicts amount spent by the *Maharatna* companies in different sectors.

Healthcare, Drinking Water and Sanitation, and Education, Skills Development and Livelihood Generation are the most preferred areas for CSR spend during the last three years. These were followed by Environment, Sustainability and Infrastructure and Rural Development initiatives. The companies have been unenthusiastic in certain areas like slum development, welfare of army veterans and women empowerment where companies hardly opened their CSR kitty. As shown in ta-

**Table 5:** The cumulative spending in CSR by each company in the last three years (INR million)

Sector	BHEL	CIL	GAIL	IOCL	NTPC	ONGC	SAIL	Grand Total
Armed Forces Flag Day Fund	-	5.0	-	-	-	-	-	5.0
Education, Skill Development & Livelihood Generation	1248.9	234.1	351.8	1253.3	1149.4	2684.4	400.8	7322.7
Environment sustainability	70.9	156.0	-	1153.9	691.8	4149.2	198.6	6420.4
Healthcare, Drinking Water & Sanitation	381.2	800.3	567.6	1281.4	4283.4	2448.9	420.5	10183.3
Heritage India	11.6	-	-	229.2	39.9	597.5	-	878.2
Infrastructure & Rural Development	116.2	137.8	855.5	-	955.1	2556.2	137.0	4757.8
Others	-	429.2	271.0	902.4	2199.1	1301.5	-	5103.2
Promotion of Sports	0.4	438.6	141.0	24.4	37.9	107.7	-	750.0
Promotion of Sports, Art & Culture	-	-	-	-	-	204.0	129.3	333.3
Slum Development	0.7	-	-	-	-	-	-	0.7
Women Empowerment & Care for Sr. Citizens and Persons with Disabilities (PwDs)	7.7	68.7	23.9	-	-	42.0	85.2	227.5
Administrative expenses	-	2.9	-	-	141.8	310.5	-	455.2
Capacity Building	112.8	-	68.8	-	249.6	-	31.1	462.3
<b>Grand Total</b>	<b>1950.5</b>	<b>2272.5</b>	<b>2279.5</b>	<b>4844.6</b>	<b>9748.0</b>	<b>14401.9</b>	<b>1402.5</b>	<b>36899.5</b>

Source: Compiled by authors from annual reports of the respective company

**Table 6:** Sector-specific and year-wise spending by each company  
(INR million)

<b>Company</b>	<b>Sector</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
<b>BHEL</b>	Capacity Building	36.8	41.9	34.1
	Education, Skill Development & Livelihood Generation	594	439.8	215.2
	Environment sustainability	16.9	48.4	5.6
	Healthcare, Drinking Water & Sanitation	287.1	84.5	9.5
	Infrastructure & Rural Dev	69	44.2	3
	Promotion of Sports	0.4	-	-
	Slum Development	0.7	-	-
	Women Empowerment & Care for Sr. Citizens & PwDs	7.7	-	-
	Preservation of Art, Culture and Heritage	7.9	3.3	0.5
<b>Total</b>		<b>1020.5</b>	<b>662.1</b>	<b>267.9</b>
<b>CIL</b>	Administrative expenses	1.6	0.4	1.0
	Armed Forces Flag Day Fund	-	5.0	-
	Education, Skill Development & Livelihood Generation	0.9	215.6	17.6
	Environment sustainability	-	53.1	102.8
	Healthcare, Drinking Water & Sanitation	197.7	282.1	320.5
	Infrastructure & Rural Development	4.5	48.8	84.4
	Others	-	109.7	319.5
	Promotion of Sports	-	5.0	433.6
	Women Empowerment & Care for Sr. Citizens & PwDs	41.6	12.9	14.2
<b>Total</b>		<b>246.2</b>	<b>732.6</b>	<b>1293.6</b>
<b>GAIL</b>	Capacity Building	-	31.3	37.5
	Education, Skill Development & Livelihood Generation	44.7	173.8	133.2
	Healthcare, Drinking Water & Sanitation	66.2	371.9	129.5
	Infrastructure & Rural Development	60.7	460.2	334.6
	Others	-	106.9	164.1
	Promotion of Sports	-	28.5	112.5
	Women Empowerment & Care for Sr. Citizens & PwDs	-	13.9	10.0
<b>Total</b>		<b>171.6*</b>	<b>1186.4</b>	<b>921.6</b>

<b>Company</b>	<b>Sector</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
<b>IOCL</b>	Education, Skill Development & Livelihood Generation	151.8	224.2	877.3
	Environment sustainability	294.8	405.7	453.4
	Healthcare, Drinking Water & Sanitation	561.0	576.8	143.6
	Others	125.4	354.5	422.5
	Promotion of Sports	4.9	5.6	13.9
	Preservation of Art, Culture and Heritage	-	-	229.2
	<b>Total</b>	<b>1137.9</b>	<b>1566.8</b>	<b>2139.9</b>
<b>NTPC</b>	Administrative expenses	141.8	-	-
	Capacity Building	-	135.7	113.9
	Education, Skill Development & Livelihood Generation	-	544.9	604.5
	Environment sustainability	-	338.5	353.3
	Healthcare, Drinking Water & Sanitation	-	3277.3	1006.1
	Infrastructure & Rural Development	-	442.1	513
	Others	1910.1	128.9	160.1
	Promotion of Sports	-	18.9	19
	Preservation of Art, Culture and Heritage	-	31.7	8.2
<b>Total</b>	<b>2051.9</b>	<b>4918</b>	<b>2778.1</b>	
<b>ONGC</b>	Administrative expenses	-	100.6	209.9
	Education, Skill Development & Livelihood Generation	474.6	633.3	1576.5
	Environment sustainability	2874.2	29.2	1245.8
	Healthcare, Drinking Water & Sanitation	370	1158.8	920.1
	Infrastructure & Rural Development	938.7	1614.2	3.3
	Others	0	531.6	769.9
	Promotion of Sports	12.2	76.7	18.8
	Promotion of Sports, Art & Culture	204	-	-
	Women Empowerment & Care for Sr. Citizens & PwDs	42	-	-
	Preservation of Art, Culture and Heritage	36.6	46.2	514.7
<b>Total</b>	<b>4952.3</b>	<b>4190.6</b>	<b>5259.0</b>	

Company	Sector	2014-15	2015-16	2016-17
SAIL	Capacity Building	10.4	8.6	12.1
	Education, Skill Development & Livelihood Generation	108.3	176.5	116
	Environment sustainability	47.9	113.9	36.8
	Healthcare, Drinking Water & Sanitation	110.3	252.3	57.9
	Infrastructure & Rural Development	20.5	89.7	26.8
	Promotion of Sports, Art & Culture	23.4	76.6	29.3
	Women Empowerment & Care for Sr. Citizens & PwDs	29.6	44	11.6
<b>Total</b>		<b>350.4</b>	<b>761.6</b>	<b>290.5</b>
<b>Grand Total</b>		<b>9930.8</b>	<b>14018.1</b>	<b>12950.6</b>

\*Though GAIL has spent INR 720 million (€ 8.97 million) during 2014-15, the annual report provides information about the expenditure of INR 171.6 million (€ 2.13 million) which include only major projects approved for implementation in F/Y 2014-15, being continued in the current year also. It excludes (i) projects which have been dropped (ii) projects which have not taken off till date and (iii) Small projects of value < INR 10 million (€ 0.12 million)

Source: Compiled by authors from annual reports of the respective company

ble 5, CIL is the only company which has taken initiative for the welfare of armed forces veterans, war widows and their dependents by contributing a sum of INR 5 million (€ 62311.69) towards Armed Forces Flag Day Fund (AFFDF) in 2015-16. Although from a strategic point of view spending in technology incubators may generate benefits to the *Maharatna* companies in the long-term through the development of cutting-edge technology and innovations that may enhance their operational efficiency and productivity of the companies, the technology incubators received no support from any of these companies. Since statutory provisions exclude activities which have been undertaken in pursuance of its normal course of business from the ambit of CSR, business strategy and CSR are hardly connected.

The analysis of CSR activities shows that even though the statutory provisions have excluded the “one-off events” such as charitable contributions from the ambit of CSR expenditure, a few companies are still spending on activities like the health camps, blanket distribution and donation in PM Fund. Be that as it may, Table 5 below shows the cumulative CSR spending by each *Maharatna* company in the last three years whereas Table 6 shows the cumulative year wise and sector-specific CSR spending during the same period.



## 9. Monitoring framework and reporting

### 9.1 Monitoring of CSR Activities

The legal provisions under Rule 5(2) of Companies CSR Rules mandate CSR Committee to institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the companies. The MCA has stated that the spirit of the law is not to monitor but to create conducive environment for enabling the corporates fulfil their social responsibility by contributing towards nation building.<sup>137</sup> It also states that the government has no role to play in monitoring and implementation of CSR by companies. *Maharatna* companies monitor through periodic reporting and milestones-based payment to implementing partners. Although some of the *Maharatna* enterprises have provision for hiring an external agency for monitoring, as of now, neither of the companies have involved any such agency for monitoring.

At NTPC, monitoring of CSR projects is conducted regularly at different levels. A monthly review of the CSR projects is conducted at the unit level. At the regional level, quarterly assessment is being done, and at HO level review is done every six months. Since 2012, all the CSR projects/programmes of NTPC have been part of ERP. CSR Committee of CIL and its subsidiaries are responsible for monitoring the progress on work of on-going projects periodically. They prepare annual CSR report and submit to CSR and Sustainability Committee of the Board. An online MIS system has also been launched by CIL on 2<sup>nd</sup> October 2016 for monitoring the CSR activities of its subsidiaries as well as its own. The portal also serves as a platform for the implementing agencies which seeks to leverage funds from CSR budget of CIL and its subsidiaries.

CSR activities at BHEL are regularly monitored at the unit level. The unit level CSR committee send a monthly report to corporate CSR to update on the progress of implementation. The corporate team of CSR suggests changes, if necessary. CSR projects are monitored by unit level committees in GAIL. A monthly report is prepared by these units and sent to corporate committee. Monitoring is done through quarterly video conferencing between corporate office and units. Milestone-based payment is made to implementing agencies which allows GAIL to track the progress of project implementation.

IOCL monitors the progress of CSR projects through site visits by CSR officers or inter-disciplinary committees. The Committee on CSR and Sustainable Development at ONGC is responsible for monitoring of approved projects. They make regular field visits to project sites; do comprehensive

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<sup>137</sup> Ministry of Corporate Affairs, 'Report on Corporate Social Responsibility by Legal Sub-Committee' (Ministry of Corporate Affairs 2018).

**Table 7: Manner in Which CSR Amount Is Spent During the Financial Year**

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	CSR Project or Activity Identified	Sector in which the Project is Covered	Projects or Programs (1) Local Area or Other (2) Specify the State and District where Projects or Programs were Undertaken	Amount Outlay (Budget) Project or Program- Wise	Amount Spent on the Projects or Programs Sub-Heads: (1) Direct Expenditure on Projects or Programs (2) Overheads	Cumulative Expenditure up to the Reporting Period	Amount Spent: Direct or Through Implementing Agency
1.							
2.							
3.							
	Total						

**Source:** Adopted from Companies (Corporate Social Responsibility Policy) Rules, 2014

documentation; compile field reports; collect feedback from beneficiaries; check timely fund utilization to ensure that projects, as budgeted, are being carried out and undertake any activity that the CSR Committee may deem necessary in the larger interest of its CSR initiatives. Monitoring of the projects is carried out quarterly and report is submitted to the CSR Committee. In case of SAIL, CSR Nodal Officer monitors every stage of CSR initiative. The Nodal officer keeps track of the progress on a regular basis through status check against pre-defined milestones of the project. Cross-functional CSR groups formed at plant/unit keep a check on the progress of CSR projects/programmes periodically and take necessary corrective measure, if necessary. A monthly progress report of CSR programmes is submitted to the corporate office. Payments to Implementing Agencies, which are tied with the achievement of the milestones, are made in instalments. A consolidated report is submitted by the Nodal officer to corporate CSR on a quarterly basis.

As far as reporting is concerned, in the last three years, all the companies have reported on CSR activities in line with the format given in the CSR rules which suggests that the legislation has positively impacted the CSR implementation and monitoring by making the entire mechanism more transparent in *Maharatna* companies.

## 9.2 CSR Reporting

The reporting provision under Rule 8(1) makes it mandatory for the Board of the company to provide details on CSR activities of the company in the form of an annual report under the Annexure of the CSR Rules, 2014. The Rules seek a foreign company to include an Annexure regarding report on CSR in the balance sheet filed under sub-clause (b) of sub-section (l) of section 381.<sup>138</sup> The legislation mandates the board to include in its report an annual report on CSR.<sup>139</sup> The annual report on CSR shall disclose CSR policy, composition of CSR committee, CSR projects or programs or activities undertaken and the expenditure incurred by the company on CSR. In this regard, a specific template, presented in Table 7, has been provided under Annexure in the Companies CSR Rules 2014, to report on the CSR activities.

The legislative provisions of mandatory disclosure on CSR activities have increased the transparency and accountability of companies towards CSR. Before the statutory guidelines, the reporting on CSR activities was limited to expenditure under various developmental themes. The legal provisions have mandated all the companies to report under a specific template provided in the Corporate Social Responsibility (Policy) Rules. With a structured and comprehensive template in place, the companies

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<sup>138</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 8(2).

<sup>139</sup> Companies (Corporate Social Responsibility Policy) Rules 2014, rule 8(1).

are reporting on the amount spent on an individual project, details of implementing agencies, allocated budget & actual spending and the location of the project(s). Moreover, the Act has mandated the companies to provide reasons in case of none or under spending on CSR. In fact, penalty provisions are in place in case of non-disclosure of CSR activities. Furtherer, the law has mandated that the report on CSR activities should be a part of the director's report and should be signed by the Managing Director of the company, thereby, enhancing the accountability of top management of firms for CSR. No doubt, reporting and disclosure on CSR activities has created some additional burden on the management, more so, when the company's CSR activities pan across India and involve substantial funds.

## 10. IMPACT ASSESSMENT OF CSR INITIATIVES

The report submitted by the High Level Committee on CSR states that the government has no role in engaging external experts for monitoring the quality and efficacy of CSR expenditure of companies. It recognized that the Board and CSR committee of the company are fully competent to engage third parties to have impact assessment of its CSR programmes. Such assessment validates the compliance of the CSR provisions of the law.<sup>140</sup> Though *Maharatnas* have mandated impact assessment of CSR projects by a third-party agency, certain specification have been prescribed regarding the budget, time-frame and indicators. The projects which exceed a year and incur spending of INR 20 million (€ 0.24 million) or more are termed "Mega Project" at BHEL for which impact evaluation is mandatory the cost of which should be met from the stipulated administrative expenditure. At CIL, annual audit of all activities is done by a local auditor whereas at GAIL, yearly impact assessment, for its CSR Projects, is done by an external agency. Also, a report on achieved milestones and qualitative & quantitative benefits generated by the project is submitted by the implementing agency. SAIL, too, engages a third-party agency for the impact evaluation and social audit of its CSR & Sustainability initiatives. IOCL undertakes impact assessment for its large value (INR 5 million approximately € 62311.69) activities/projects. The study is conducted at least after one year from the date of commissioning of the activity/project. NTPC has devised key performance indicators (KPIs) for Social Impact Evaluation (SIE) of CSR projects/programmes which are conducted every three-year at Plant level.

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<sup>140</sup> Ministry of Corporate Affairs, 'Unstarred Question No. 3793' (Ministry of Corporate Affairs 2017).

Despite such impact evaluation systems, there is no benchmark for comparing CSR performance of companies within and between the sectors. This is due to heterogeneity in operations, lack of extensive documentation and the difference in methods used for impact evaluations by the PSEs.<sup>141</sup> In 2017, the DPE took a proactive initiative to conduct the impact assessment of CSR activities of 134 CPSEs for which Expression of Interest (EOI) was invited from expert agencies but unfortunately the same was later repealed by the department without assigning any reason.<sup>142</sup>

## 11. HIGH IMPACT PROJECTS

It is evident that *Maharatnas* have done outstanding work for community development and have impacted lives of a score of people. According to CSR head of BHEL, Udayan Shalini, Clean India, Healthy India and Educated India are their high impact projects. GAIL Utkarsh, a flagship education initiative of GAIL, selects students from government schools located in rural parts of two states, Uttar Pradesh and Madhya Pradesh. The students are screened through a written examination. 100 students are selected each year and provided specialised residential coaching and mentoring for 11 months. These students were initially mentored by DGP, Bihar, Abhayanand. The programme prepares meritorious children from marginalised communities to compete in engineering entrance examinations such as Joint Entrance Examination and All India Engineering Entrance Examination for which GAIL bears all expenses. In 2015-16, 55 children secured admissions in various IITs and other prestigious engineering institutions of the country. In 2010, GAIL India started the Placement Linked Skills Development Programme in partnership with IL&FS Skills. Three world-class vocational training institutes have been set-up at Guna in Madhya Pradesh, Dediapada in Gujarat, and Tandur in Andhra Pradesh. GAIL Srijan was implemented in Uttarakhand for restoration and rehabilitation of the affected people post the Flash Floods that hit in 2011. The project is also providing livelihood opportunities to affected communities. An e-commerce website ([www.srijanhaat.com](http://www.srijanhaat.com)), proposed to be launched in 2017, is under construction which will provide a platform where the goods made by project beneficiaries can be sold.

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<sup>141</sup> Anil Dhaneshwar and Pooja Pandey, *Status of Corporate Social Responsibility among PSUs in India* (Centre for Science and Environment 2015) <[http://www.indiaenvironmentportal.org.in/files/file/Status%20of%20CSR%20in%20Indian%20PSUs%20\(Oil%20and%20Power%20sector\).pdf](http://www.indiaenvironmentportal.org.in/files/file/Status%20of%20CSR%20in%20Indian%20PSUs%20(Oil%20and%20Power%20sector).pdf)> accessed 17 May 2018.

<sup>142</sup> Department of Public Enterprises, 'Expressions of Interest (EOI) For Selection of Agency for Evaluation Study For Impact Assessment of CSR Activities of Central Public Sector Enterprises (CPSEs)' (Department of Public Enterprises 2017).

NTPC Foundation has established an orthopaedic Centre at Tanda, Rihand, Korba, Dadri and Bongaigaon in partnership with National Institute for the Orthopedically Handicapped (NIOH). Rehabilitation, restorative surgery, medical interventions and surgical corrections, fitting of artificial aids and appliances and therapeutic services are provided by this Centre. About 38,800 PwDs have been benefitted till the end of FY 2015-16. Further, NTPC Foundation initiated TB Control Programme with an aim to ensure that every TB patient residing in the vicinity of 25-30 km from NTPC station is brought under the TB Control Programme and provided full course of treatment. 36,027 persons have been examined for TB, positive case of 4554 persons started treatment out of which 3833 have completed the therapy until March 2016. NTPC Foundation has set-up 12 Directly Observable Treatment cum Designated Microscopy Centres (DOT cum DMC) under Public-Private Partnership programme of Revised National Tuberculosis Control Programme (RNTCP). Besides providing space and doctors' services, NTPC has also given mobile vans and diagnostic equipment to the Centres. At Ramagundam, NTPC has constructed sheds and installed RO plants. These are now run by the community themselves. In Simadhari, access to safe drinking water was ensured by leveraging resources from community and the government. It is an excellent model of Public – Private and Community partnership. Further, NTPC has adopted 17 ITIs and set up nine new ITIs. Till date, above 10,000 trained persons have got employment. ONGC, too, has many impactful projects which include *Varishthajana Swasthya Sewa Abhiyan*, *Harit Moksha* and Eastern Swamp Deer Conservation.

## **12. LIMITATIONS OF THE LEGISLATION**

The idea of CSR is known to provide competitive advantage to the companies through strategic interventions in social and environmental issues. The law has removed the competitive incentive by mandating CSR activities excluding activities undertaken in the normal course of business. Thus, the possibility for companies to align their CSR activities with business operations has been restricted. The companies would hesitate to integrate social or environmental causes with its value chain as the legislation will not allow such a move to be treated under mandated CSR. Clarification in the matter may provide a clear direction to the companies while amendments in legislature, if required, will undoubtedly open avenues for corporates to embed CSR activities in their value chain. Anyhow, a linkage between the CSR activities and business operations did not exist in *Maharatna* enterprises even before the legislation. CSR was consis-

tently run under the charity or philanthropic mode rather than strategic business approach. This might be due to their operation in the business-to-business (B2B) segment where a direct linkage between the company's operations and social issue either may not exist or difficult to identify. Further, the law defines the broad contours and end use of CSR funds but it restricts the corporates in choosing the CSR activities within Schedule VII. Considering the multifarious dimension of social and environmental issues, the corporate should be given freedom to choose CSR activities. In this regard the report of HLC has recommended that an omnibus clause should be included in the Act considering that certain development issues, which cannot be anticipated, need priority.

Though legal provisions state that CSR activities should be undertaken in either the project or programme mode and disregard one-off events from CSR activities. One-time events, if repetitive, may also create sustainable impact. Therefore, a distinction should not be made between one-time activity and projects or programs. For example, periodic health camps may create a sustained impact. If a person is diagnosed with diabetes during a health camp, she can be provided specialised medical advisory, treatment and periodic follow up through repetitive health camps.

The participation of corporate in addressing many social issues through market-based approaches gets limited due to specific activities mentioned under Schedule VII that qualify for CSR spending. The social business, which was included as one of the activities under the Schedule VII of the Companies Act, 2013, has been removed from the amended Schedule VII. This is a narrow approach because there are many issues in education, livelihood, women empowerment which can be addressed through a market-based approach. The inclusion of more activities will not only allow corporate to support innovations but also provide more opportunity to dovetail CSR funds with government schemes such as Start-up India and Skill India which not only contribute to economic growth but also generate employment for the youth creating social value. Corporates have been advocating that they should be allowed to choose their CSR activities for desired outcome. MCA, however, in its General Circular No. 21/2014 on CSR activities, mentions that social business projects can be undertaken under the promotion of health care.

Item viii of Schedule VII of Section 135 recognizes the contribution made to the Prime Minister's National Relief Fund (PMNRF) or any other such fund as CSR activity. Though the idea behind including this item is to use CSR budgets in emergency, this brings infirmity to the Act by opening avenues for the corporates to appease top politicians and the gov-



ernment. Such activity promotes cheque book CSR providing an easy escape route for the corporates to avoid their social responsibility. Moreover, contribution to the Prime Minister's National Relief Fund enjoys 100% tax benefits under the Income Tax Act 1961. The analysis of CSR spending suggests that during the first year of CSR implementation, the government returned the cheques deposited in the PM National Relief Fund to the corporates stating that the spirit of the law is to harness skills and competencies of the corporates for nation building rather than filling gaps in development funds. Despite this, the contribution to PMNRF, in financial year 2015-16, increased by 418% compared to the previous year<sup>143</sup>. Several state governments are eyeing on CSR funds which is evident from the Chief Minister of West Bengal requesting the Prime Minister to consider the contribution to Chief Minister's Relief Funds (CMRF) as corporate social responsibility (CSR) activity.<sup>144</sup>

The Public Trusts, which the companies are allowed to employ for implementing CSR activities, provide channel of laundering CSR funds<sup>145</sup>. These Trusts are not governed and monitored by a national law and are rarely scrutinized. Some of these trusts engage in nefarious activity by receiving CSR funds as implementing agencies and returning the money later, in cash or kind, to the company officials or promoters after deducting their commission. Such immoral trusts are generally owned and used by politicians. Sometimes dishonest high net worth individuals engage in this activity to manage their unaccounted money.

### **13. ROLE OF GOVERNMENT IN PROMOTING CSR**

To facilitate CSR activities and encourage the corporates to embrace the legal provisions, several initiatives have been taken by the government of India including timely circulars and clarifications on the rules. HLC was constituted to suggest measures for improvement in monitoring of implementation of CSR policies by companies. National CSR Award has been instituted by the government to recognise the exemplary work of corporates under CSR legislation. Further, the government has launched National CSR Data Portal, a single window platform, to access CSR data.

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<sup>143</sup> Pooja Domadia, 'PM National Relief Fund Scheme Receives 400% More CSR Funds In 2015-16 - The CSR Journal' (*The CSR Journal*, 2016) <<http://thecsrjournal.in/pm-national-relief-fund-scheme-receives-400-more-csr-funds-in-2015-16/>> accessed 28 April 2018.

<sup>144</sup> Haris Zargar, 'Mamata's Request to Allow Company Donations to CM Relief Fund is against Spirit of CSR: Experts' (<https://www.livemint.com/>, 2018) <<https://www.livemint.com/Politics/rQkVweQB45jCHVSDCPHrI/Mamatas-request-to-allow-firms-donations-to-CM-relief-fund.html>> accessed 20 May 2018.

<sup>145</sup> Dinesh Narayanan, 'How Indian Companies are Misusing Public Trusts to Launder their CSR Spending' (*The Economic Times*, 2015) <<https://economictimes.indiatimes.com/news/economy/finance/how-indian-companies-are-misusing-public-trusts-to-launder-their-csr-spending/articleshow/49474584.cms>> accessed 28 April 2018.

MCA is made responsible to watch companies close with regard to their compliance with the CSR laws. Show-cause notices have been served by MCA to 1018 defaulting companies out of which 160 companies have to face penal actions for violations of CSR law.<sup>146</sup>

Recently, MCA constituted a Legal Sub-Committee on 4<sup>th</sup> April 2018 to revisit/review the existing framework of CSR legislation.<sup>147</sup> This Committee has suggested withdrawal of General Circular of 18<sup>th</sup> June 2014 mentioning that this restricts Central Government to take punitive actions against the non-compliant companies. It further recommended that the unspent amount be either spent within a year or alternatively, deposited in the Central Government Funds as prescribed in Schedule VII of Companies Act, 2013. The Legal Sub-Committee on CSR acknowledged identification of eligible companies as well as Officer-in-Default (O-I-D) as defined under Companies Act, 2013 as major challenges in enforcement of the CSR law. In view of this, the Sub-Committee has advised to institute a centralised command and control system, with the use of technology, for the effective implementation of the law.<sup>148</sup>

Some of the state governments have formed CSR councils and created dedicated websites and portals for CSR. These serve as an initial base building of CSR by the companies as well as the state governments. These portals can be used strategically as a mid-link to connect companies to its prospective specialized implementing agency. Public, at large, can access these portals and give their views and suggestions.

Though the efforts towards promoting CSR are apparent, the methodology to achieve the desired result is falling flat on the ground. Government control and dominance in public sector entities are compromising the underlying intent of the law which is to complement government efforts in addressing the socio-enviro-economic issues. In case of public sector enterprises, a significant portion of CSR kitty is being directed towards government schemes. After the change of central government in 2014, Swach Bharat Kosh and Clean Ganga Fund, two flagship schemes of the present government, were included in the Schedule VII and made eligible for tax exemption. Massive funds were then allocated by the PSEs to Swach Bharat Kosh. CIL alone spent INR 2350 million (€ 29.28 million) on

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<sup>146</sup> PTI, '160 Companies to Face Penal Action for CSR Violations - ETCFO' (*ETCFO.com*, 2017) <<https://cfo.economicstimes.indiatimes.com/news/160-companies-to-face-penal-action-for-csr-violations/60992914>> accessed 28 April 2018.

<sup>147</sup> Ministry of Corporate Affairs, 'Constitution of Steering Committee on Corporate Social Responsibility (CSR) to Review the Functioning of CSR Enforcement & to Recommend a Uniform Approach for its Implementation' (Ministry of Corporate Affairs 2018).

<sup>148</sup> Ministry of Corporate Affairs, 'Report on Corporate Social Responsibility by Legal Sub-Committee' (Ministry of Corporate Affairs 2018).

this initiative.<sup>149</sup> Recently, the Ministry of Petroleum instructed the GAIL, ONGC and IOCL to allocate INR 500 million (€ 6.23 million) each from their CSR funds for the Statue of Unity.<sup>150,151</sup> To this ONGC reported having fulfilled the complete demand while GAIL and IOCL have contributed INR 250 million (€ 3.11 million) and INR 218.3 million (€ 2.72 million), respectively.<sup>152</sup> Contributions of such massive amounts to government schemes enable the companies to escape their CSR responsibility.

Falling in the lines of central government, the lawmakers at the state seems to expand the scope of permitted CSR spending by building of religious symbols. The government of Uttar Pradesh has plans to leverage CSR funds to construct a 100-metre tall statue of Lord Rama in Ayodhya as well as the campus of Gorakhpur temple from where the present Chief Minister hails. The earlier government, too, had plans to construct a 50-metre tall statue of Lord Krishna in Saifai, the assembly constituency of former Chief Minister.<sup>153</sup> Such political and religious aspirations are derailing the purpose of CSR legislation.

The government owe a moral and electoral responsibility for the betterment of the society. It is high time for the government to embrace suggestions made in the Bajjal Committee report which observed that the government should have no role in engaging external experts for monitoring the quality and efficacy of CSR expenditure of companies; the board should approve the allocations as per CSR policies of the company. The report further stated that companies, irrespective of their ownership, should be treated at par for adhering to CSR provisions of the Act and rules made thereunder.

<sup>149</sup> The Hindu, 'Coal India to Spend Rs 235 Cr on Improving Sanitation' (*The Hindu*, 2014) <<http://www.thehindu.com/business/Industry/coal-india-to-spend-rs-235-cr-on-building-toilets-improving-sanitation/article6373098.ece>> accessed 14 May 2018.

<sup>150</sup> Amitav Ranjan, 'For Sardar Patel Statue, Oil PSUs are 'Directed' to Pay Rs 200 Crore' (*The Indian Express*, 2017) <<https://indianexpress.com/article/india/for-sardar-patel-statue-oil-psus-are-directed-to-pay-rs-200-crore-4690888/>> accessed 28 April 2018.

<sup>151</sup> FE Online, 'Petroleum Ministry Direct Oil PSUs to Pay Rs 200 Crore for Building 182-Metre Tall Statue of Sardar Vallabhbhai Patel' (*The Financial Express*, 2017) <<https://www.financialexpress.com/india-news/petroleum-ministry-direct-oil-psus-to-pay-rs-200-crore-for-building-182-metre-tall-statue-of-sardar-vallabhbhai-patel/703370/>> accessed 28 April 2018.

<sup>152</sup> Haris Zargar, 'PSUs Devote over Rs121 Crore of CSR Funds towards 'Statue of Unity'' (<https://www.livemint.com/>, 2018) <<https://www.livemint.com/Companies/X0jTp5bYxHuPWGvmsJVvHP/PSUs-devote-over-Rs121-crore-of-CSR-funds-towards-Statue-of.html>> accessed 28 April 2018.

<sup>153</sup> The Wire, 'UP Government Wants to use CSR Funds for 100-Metre Ram Statue' (*The Wire*, 2018) <<https://thewire.in/politics/up-government-wants-to-use-corporate-funds-for-100-metre-ram-statue>> accessed 28 April 2018.

## 14. CONCLUSIONS AND RECOMMENDATIONS

The advent of CSR legislation has transformed the entire landscape and ecosystem of CSR in India. The law has made the corporates to address pressing social issues. The legislation captures all the stages of a project life-cycle and has shaped the CSR Policies, mode of implementation, monitoring framework and mechanism of impact assessment. The reporting and disclosure mechanism of both the public and private entities have been addressed. In addition, activities mentioned under Schedule VII have provided a menu of items for the corporates to select a wider range of developmental activities. Notwithstanding, the legal provisions are still evolving as is evident from periodic amendments in CSR Rules. The constitution of HLC and Legal Subcommittee by MCA, further, suggests that the tenets of the law are still in nascent stage.

The government has undoubtedly played an active role for the improvement of CSR legislation through periodic amendments into the Section 135 and Schedule VII of the Act. A high-level committee was also set-up by the government to invite suggestions and recommendations for strengthening the statute and creating enabling environment for the effective implementation of the legislation and development of robust monitoring mechanism. To encourage the corporates to undertake impactful and sustainable CSR projects or programs or activities, the government has taken initiatives such as instituting national CSR awards and launching National CSR Data Portal. Also, for the promotion CSR at the regional level dedicated websites, online portals, and state level councils have been constituted by the state governments. On the other hand, GoI has started taking stringent action against non-compliance of CSR law. Despite initial scepticism, the legislative provisions on CSR have been received positively by both the public and private sector entities which are evident from a northward trend in CSR spending.

The public-sector enterprises were primarily set up with socialist goals. The diversity of their CSR operations, geographical coverage, and a clean and appreciative public presence make contribution of *Maharatna* companies exemplary. All the *Maharatna* have framed CSR policies in adherence to the legal provisions. The CSR Rules have increased the transparency and accountability of corporates by making disclosure of CSR mandatory. The cumulative amount spent on CSR activities by *Maharatna* companies has significantly risen since the enactment of CSR legislations though some of them made loss during the period under consideration. It is, however, saddening that CSR expenditure on the welfare of armed forces & war widows and technology incubators is negligible. The

foundations created by the *Maharatna* enterprises have not been able to leverage other sources of fund till now. They need to strive for leveraging funds from government, multi-lateral and bilateral agencies to increase CSR cake size. There is a need to document and refer the impact and findings of the CSR activities initiated by the PSEs as they will help to trace the course of CSR activities and will help in bringing improvements and making CSR spends more impactful.

Unfortunately, CSR activity is losing its spirit in Public Sector Enterprises (PSEs) due to continuous and increased interference by the government. The mantra for CSR has become monitoring & allocation, the policy has gone to back seat. Allocation of a huge chunk of CSR funds has been directed by the government rather than the CSR committees of the PSEs which receive diktats from the central as well as state governments to allocate their CSR fund. Board decisions are guided more by government directives rather than compelling social issues. The demands from influence groups, local MP, MLA, and village have further worsened the situation which can be countered by the government by playing the role of motivator, catalyst and facilitator rather than that of the director of CSR activity.

The red tape cut by the present government has enabled India to jump up in World Bank's ease of doing business ranking by 100 spot<sup>154</sup> which has made foreign investments in India attractive. It is high time that the government streamline CSR rule and remove infirmity in the provisions for all companies private, public and foreign. Further, the government should avoid imposition of political ideas and strive to ensure that development opportunity under CSR is not frittered away. It should be ensured that only sustainable programmes/projects are taken for the optimal benefit of the poor and underprivileged and avoid spending CSR funds for direct or indirect political and religious purposes. Lastly, the provisions of the law should be strengthened wherever necessary for the broader public good.

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<sup>154</sup> BT Online, 'Ease of Doing Business Rankings: India Makes Highest-Ever Jump to Rank 100 Out of 190 Countries' (*BusinessToday.in*, 2017) <<https://www.businesstoday.in/current/economy-politics/ease-of-doing-business-rankings-india-rank-world-bank-100/story/262976.html>> accessed 28 April 2018.