

## **Assessment of CSR Law in Companies Act, 2013 – An Analysis of the Performance of BSE-SENSEX Companies**

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**Abstract: Introduction:** *The new law making CSR expenditure and reporting mandatory for certain companies is a new chapter in the Indian corporate world and has provided a necessary boost to the status of companies' responsibility towards the stakeholders, and transparency and accountability of their actions.*

**Need:** *The mandatory 2% spending of profits on CSR activities got mixed reaction from corporate executives. To ensure that the enforcement of the law isn't limited to the term "cheque-book CSR", regular exploration of the companies' CSR expenditures and their consequent outcomes is absolutely essential.*

**Objective:** *The paper aims to assess the outcome of Section 135 of the Companies Act, 2013, in the first year of its implementation among the BSE-SENSEX companies.*

**Research methodology:** *Secondary sources were utilized for collecting profits and CSR expenditure figures of the selected 30 companies for conducting an ex-post analysis for the year 2014-15.*

**Key findings of the study:** *Less than 15% of the BSE-SENSEX companies had spent on CSR activities an amount that is equal to or greater than the stipulated 2% of the average profits of the preceding 3 years as per Section 135 of Companies Act, 2013.*

**Implications:** *Immediate attention of regulatory bodies is desired towards companies failing to dispense the funds earmarked for CSR as stipulated by the law to ensure compliance.*

**Keywords:** *Companies Act 2013, BSE-SENSEX, Corporate governance, Social responsibility*

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### **I. CORPORATE SOCIAL RESPONSIBILITY- An Elucidation**

Corporate social responsibility (CSR, also called **corporate conscience**, **corporate citizenship** or **responsible business**) can be defined as a form of corporate self-regulation integrated into a business model. CSR policy functions as a self-regulatory mechanism where a business monitors and ensures its active compliance with the spirit of the law, ethical standards and national or international rules. With some models, a firm's implementation of CSR goes beyond compliance and engages in actions that appear to further some social good, beyond the interests of the firm and that which is required by law. CSR aims to embrace responsibility for corporate actions and to encourage a positive impact on the environment and shareholders including consumers, employees, investors, communities, and others." (Wikipedia)

The basic objective of CSR is to increase company's overall impact on society and its stakeholders while considering sustainability and environment. CSR as a concept has gained momentum over the years in India, more so, after the addition of the mandatory Section in Companies Act, 2013.

#### **CSR across the world**

Over the years it is seen that large corporations have taken efforts actively to implement CSR initiatives around their area of operations. The Organization for Economic Cooperation and Development (OECD) has been the pioneer in the field of CSR. It came out with a set of guidelines for multinational enterprises in the year 1976. These guidelines were related to positive contribution that multinational companies can make towards social and economic progress. In 2007, The Malaysian government came up with a mandatory Section of publication of CSR initiatives annually by all public listed companies on "comply and explain" basis. Under the said Section, all Malaysian public listed companies either had to publish their CSR reports or had to explain why they should be exempted. Similarly, in 2009, Denmark mandated CSR reporting for state owned companies and companies having assets more than 19 million euros, revenues more than 38 million euros and having more than 250 employees. Also the French government passed a law called "GRENELLE II" under which all companies listed on French stock exchanges, including subsidiaries of foreign firms operating in France and unlisted companies having revenue more than 400 million euros and 2500 employees had to report CSR initiatives annually.

Developing economies such as Brazil, South Africa and China have been the forerunners in emerging world in terms of CSR disclosure. The Johannesburg stock exchange was the first stock exchange in developing markets to create a Socially responsible index (SRI) in 2004, to promote listed companies credibility, endurance and transparency. The Shanghai and Shenzhen stock exchanges followed suit.

## **II. POLICY FRAMEWORK FOR CSR IN INDIA**

In the last decade, CSR has developed from strategic CSR which focused on nation building to Need based CSR which focuses on national priorities such as health, education, water conservation, natural resource management and livelihood. The government of India has persuaded the corporates to participate in social and development issues not just as their social responsibility but as their business practices.

In 2010, The “Guidelines on Corporate social responsibility and sustainability for central public sector employees” was released by Department of public sector employees. The budgetary allocation for CSR is determined by the Profit after tax (PAT) of the previous year approved by board of directors.

PAT of CPSE in the previous Year	Range of Budgetary allocation for CSR and sustainability activities (as a % of PAT in the previous Year)
Less than INR 100 Crore	3%-5%
INR 100 Crore to INR 500 Crore	2%-3%
INR 500 Crore and above	1%-2%

SOURCE: The revised guidelines by DPE, wef 1<sup>st</sup> April 2013

The previous guidelines were mainly related with CSR for external stakeholders but revised guidelines also took internal stakeholders such as employees into consideration.

The Ministry of Corporate affairs also came up with “ National voluntary guidelines on social, environmental and economic responsibility of business” (NVGs) in order to provide companies guidance in dealing with expectations of inclusive growth and become responsible and avoiding peer and public pressure for companies who fail to comply.

The nine principles of National Voluntary Guidelines are:

Principle 1: Businesses should conduct and govern themselves with ethics, transparency and accountability.

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.

Principle 3: Businesses should promote the wellbeing of all employees.

Principle 4: Businesses should respect the interests of, and be responsive toward all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

Principle 5: Businesses should respect and promote human rights.

Principle 6: Business should respect, protect, and make efforts to restore the environment.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do it in responsible manner

Principle 8: Businesses should support inclusive growth and equitable development.

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner. (MCA, 2011)

## **III. THE COMPANIES ACT, 2013**

The Companies Act provided for a mandatory Section for companies, both private and public, to fulfill the need based CSR activities based on certain conditions. The Section 135 of Companies Act provides for spending of 2% of the Profits before Taxes (PBT) on CSR activities by all companies that qualify for this Section. In the event of a failure to spend the amount earmarked for Corporate Social Responsibility activities, it provided for an explanation for not spending the required amount in the Annual Director’s Report. Section 135 will be applicable to all companies that have either of the following:

- Net worth of INR 500 crores or more
- Turnover of INR 1000 crores or more
- Net profit of 5 cr or more

An average of the preceding 3 years’ Profits before Taxes will be considered for calculating the 2% for CSR. (MCA, 2013)

The Bill mandates companies to form a board-level CSR Committee comprising three or more directors with at least one independent director. The composition of the CSR Committee has to be disclosed in the annual board of director’s report. The committee will formulate and recommend a CSR policy to the board, recommend amount of expenditure and will monitor the CSR program. Schedule VI of the companies act mentions the specific activities and thematic areas to be considered as CSR:-

1. Eradication of hunger and poverty
2. Promotion of education
3. Promotion of gender equality and women empowerment

4. Health - reducing child mortality, improving maternal health, combating HIV, AIDS, malaria
5. Employment enhancing vocational skills
6. Contribution to PM's fund or other fund set up by central govt or the state govts for socio-economic development and relief and funds for the welfare of SC, ST, backward classes, minorities and women
7. Ensuring environmental sustainability
8. Social business projects
9. Such other matters as may be prescribed

### The Analysis

In this research paper, we selected 30 companies of the BSE-SENSEX<sup>1</sup> and collected data on their profits (Profit before tax) in the last 4 years (from the present year 2014-15 to the preceding years 2011-12 to 2013-14). Additionally, figures of the Actual CSR Expenditure incurred by these companies were also collected. All these figures were accessed from the Annual Reports of the respective companies to maintain authenticity of the data. The SENSEX is composed of 30 of the largest and most actively traded stocks. We aimed to find out the impact of the new law on Corporate Social Responsibility as in Section 135 of the Companies Act, 2013 on the companies with the most popular stocks in the market.

The complete list of the 30 stocks of BSE-SENSEX taken for this analysis is given in the Annexure T1. Although all 30 companies featuring in the BSE-SENSEX were taken for the analysis, 2 companies- TATA Motors and Sun Pharmaceuticals Industries Ltd. do not form part of the analysis below. Both these companies had losses in the year 2014-15 which excluded them from the purview of the Section 135 for the year 2014-15. However, both these companies report making a contribution to CSR activities in the given year, TATA spent about Rs. 18.62 crores whereas Sun Pharma made a contribution of Rs. 4.67 crore. Additionally, it is also pertinent to mention that due to the unavailability of the Annual Report of Coal India Ltd. for the year 2014-15, till 3<sup>rd</sup> December, 2015, the Annual Reports of its subsidiaries were referred to for the purpose of this study, and their figures were summarized to represent Coal India Ltd.<sup>2</sup>

### The Findings

1. The Profit before taxes earned by the 28 companies belonging to the BSE-SENSEX taken for this study comes out to about Rs. 300575.92 Cr. The average of the profits earned in the preceding 3 years is calculated at Rs. 249190.53 Cr and its 2% is Rs. 4983.81 Cr of prescribed CSR expenditure by these companies in the year 2014-15. In comparison to the prescribed amount, the actual expenditure on CSR by these 28 companies stands at Rs. 3905.88 Cr. (1.57% of the average profits and 78.37% of the prescribed CSR Expenditure as per the law).<sup>3</sup>
2. From a total of 28 companies taken for the analysis, less than 15% of the companies had spent on CSR activities an amount that is equal to or greater than the stipulated 2% of the average profits of the preceding 3 years as per the Section 135 of Companies Act, 2013. More than half of the companies (57.14%) had spent on CSR an amount that is in between 50%-100% of their respective prescribed amount. Less than 50% of the prescribed amount was spent by about 30% of the companies. Thus, about 85% of the 28 companies with the largest and most actively traded stocks on the stock market, spent less than the prescribed amount on CSR as per the new law. (See Annexure F1)
3. The 15% of the companies (4 out of 28) that have spent more than their respective prescribed amount on CSR activities include- Axis Bank, Reliance Industries Ltd., Vedanta Ltd. and Mahindra and Mahindra Ltd. (See Annexure F2)
4. The 85% of the companies (24 out of 28) that had spent less than their respective prescribed amount on CSR activities include companies like TCS, TATA Steel, ONGC and NTPC. Out of these 24 companies, 5 companies- Hindustan Unilever, TATA Steel, ICICI Bank, Infosys and TCS had actually spent more than 90% of the prescribed amount based on 2% of their average profits of the profits from the year 2011-12 to 2013-14. ITC, with actual expenditure of 99.57% spent almost exactly equal to its prescribed amount. Hero Moto fared the most disappointingly by spending an amount that is only about 4% of its prescribed CSR Expenditure, calculated on the basis of 2% of its average profits of the preceding 3 years. (See Annexure F3).

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<sup>1</sup> The 30 companies of the BSE-SENSEX taken in this study are as on 29<sup>th</sup> November, 2015. (BSE, 2015)

<sup>2</sup> For details on the calculation of the consolidated figures for Coal India Ltd., see Annexure T2.

<sup>3</sup> For a detailed list of the 28 companies studied in this paper, see Annexure T3.

5. The Top 10 companies in terms of the amount contributed towards CSR activities include Reliance, ONGC, Coal India Ltd., Infosys, TCS, ITC, NTPC, TATA Steel, ICICI Bank and Wipro. Of these, only Reliance Industries Ltd. was also among the Top 4 companies with proportion of spending on CSR greater than the prescribed 2%. The Top 10 companies have contributed an amount equal to Rs. 2853.54 Crore to CSR activities in the year 2014-15, out of the total contribution of Rs. 3905.88 Crore made by the 28 companies of BSE-SENSEX analyzed in this study. Thus, 73% of the total contribution to CSR activities by the 28 companies of the BSE-SENSEX comes from 10 companies mentioned above. (*See Annexure F4*) Of the Top 10 companies in terms of amount contributed towards CSR activities, more than half of the contribution came from Reliance, ONGC and Coal India Ltd. From the findings discussed in the points above, we know that of these 3 companies contributing the largest in absolute numbers to the CSR, only Reliance Industries had actually spent more than the prescribed 2% of its average profits of last 3 years (about 2.86%). ONGC and Coal India Ltd., though are among the Top 3 contributors to CSR, as a percentage of their respective prescribed expenditure they spent only about 74% and 63% respectively.
6. Hero Moto, Lupin Ltd., CIPLA, Vedanta Ltd., Dr. Reddy's Laboratories Ltd., Hindalco Industries Ltd., Maruti Suzuki India Ltd., Bharti Airtel, GAIL and Bajaj Auto are the lowest 10 contributors to CSR in the year 2014-15. (*See Annexure F5*) Together they have spent about Rs. 278.12 Crore on CSR activities, which is only about 7% of the total expenditure on CSR in the year 2014-15. Among these companies with lowest expenditure on CSR in absolute terms, we see Vedanta Ltd. as well, that was in fact the company that spent the largest amount as a percentage of its prescribed CSR requirement of 2%. Vedanta Ltd. spent about 272% of the CSR expenditure as prescribed by the new law, the highest among the 28 companies under study. It comes to about 5.44% of its average profits of the preceding 3 years as against the requirement of 2%.
7. Out of the 5 Banking and Finance Sector Companies included in the 28 studied for this paper, only Axis Bank spent more than the 2% prescribed amount (2.36%) on CSR in the year 2014-15. HDFC Bank, Housing Development Finance Corp. Ltd., ICICI Bank and SBI couldn't manage to spend an amount even equal to the 2% requirement. (*See Annexure F6*)
8. The profits of the year 2012-13, 2013-14 and 2014-15 were used to calculate the stipulated CSR expenditure for the 30 companies in the BSE-SENSEX as on 29<sup>th</sup> November, 2015. The total stipulated contribution for the year 2015-16 from the companies (excluding the 2 companies with negative average profits) comes out to be Rs. 5329 Crore. For the year 2014-15, the stipulated CSR contribution for the 28 eligible companies of the BSE-SENSEX had come out to be around Rs. 4983.81 Crore, while the actual expenditure by the companies was around Rs. 3905.88 Crore (78% of the prescribed CSR expenditure of the year). We observe a growth of about 7% in the stipulated contribution to CSR by the 30 companies in the year 2015-16. If the compliance rates among the companies improve due to Government's intervention through enforcement of stricter measures and guidelines, we can expect a compliance rate higher than the 78% rate observed in the year 2014-15. In that scenario, we can expect at least a contribution of Rs. 4156.62 Crore by the 28 eligible companies out of the 30, to areas fulfilling their Corporate Social Responsibilities. (*See Annexure F7*)
9. It was observed during the analysis of the Annual Reports of the year 2014-15 of each of the 30 companies in the BSE-SENSEX that almost all the companies, excluding only ONGC and Coal India Ltd., explicitly used Profits after Taxes for the computation of the average profits for the last 3 years, when it has been clarified by the Govt. that Profits before Taxes are to be used for the purpose of computing CSR expenditure requirement of the company. (PTI, 2014) The Section 135(5) states that the average net profit shall be computed according to the Section 198 of the Companies Act, 2013. Section 198(5)(a) specifies that for the computation of net profits, Income Tax and super-tax paid by the company as per the Income Tax Act, 1961, are not be deducted. This, therefore, clearly specifies that Profits before Taxes are required to be used instead of Profits after Taxes for the purpose of calculating the amount to be contributed towards CSR by each company.

Although all the companies excluding ONGC and Coal India Ltd. had used Profits after Taxes for calculating their CSR obligation in their Annual Reports, for the purpose of this study, all the calculations were made using Profits before Taxes, to get results that are in compliance with the law.

#### IV. Conclusions & Recommendations

From the analysis presented above, it is pretty evident that the new law on CSR, included in the Companies' Act, 2013 in Section 135 has not resulted in expected results in its first year of implementation. Of the companies analyzed in this study only 4 out of 28 managed to spend an amount that meets the prescribed limit of 2% of the average net profits of the last 3 years. The companies with the most active and the largest stocks on the Stock Market managed to collectively spend only about 78% of the amount prescribed as per 2% of their average profits. Moreover, a majority of these companies were using Profits after Taxes instead of Profits before Taxes, as stipulated by law, for the computation of the prescribed CSR expenditure requirement. Presently, non-fulfillment of the 2% expenditure requirement by the company only entails a disclosure by the Board in its Annual Report, prepared under Section 134(3), specifying the reasons for the failure in making the required contribution towards CSR. There is a need to discuss the possible ways in which companies can be made to not only spend the prescribed amount towards stipulated activities in CSR, but also maintain an account of how and where the contributed sum is being utilized to get the intended results out of the new law.

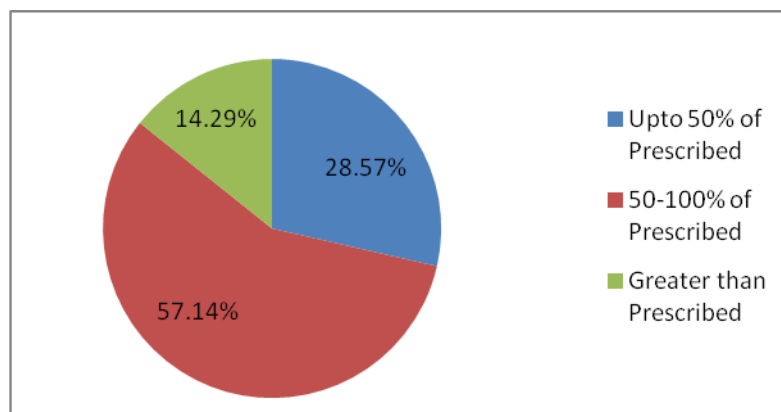
Effective CSR can be achieved by aligning CSR activities with business goals, thereby increasing their own incentive for efficient programming and implementation. The enabling and regulatory bodies such as Dept. of public enterprises, Ministry of Corporate Affairs and Indian Institute of Corporate Affairs who have set the wheels of CSR in motion must try to ensure compliance of Companies act in Toto and reduce the rising inequalities between firms without hindering business growth. Lastly, efforts are required not only in the direction of securing compliance from the companies, but also in ensuring that the funds allocated to designated CSR activities result in the intended outcomes for the society. The law, as is being feared by some, shouldn't just result in "cheque-book CSR" but, in fact, should provide concrete solutions to the problems currently being faced by the society. This is possible only when there is active participation of companies through common shared goals and Government's pro-active involvement in assessing the implementation of the law at the ground-level.

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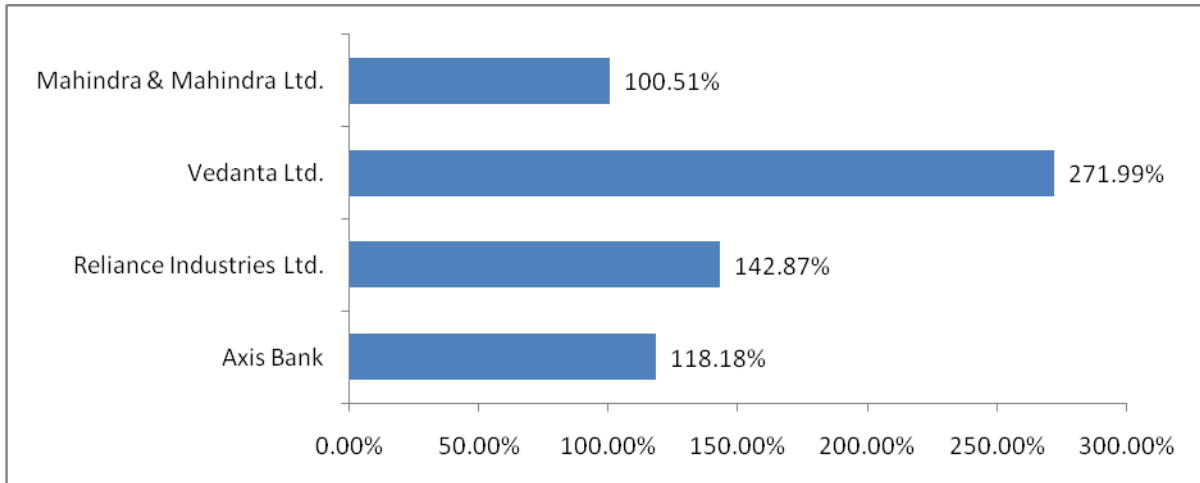
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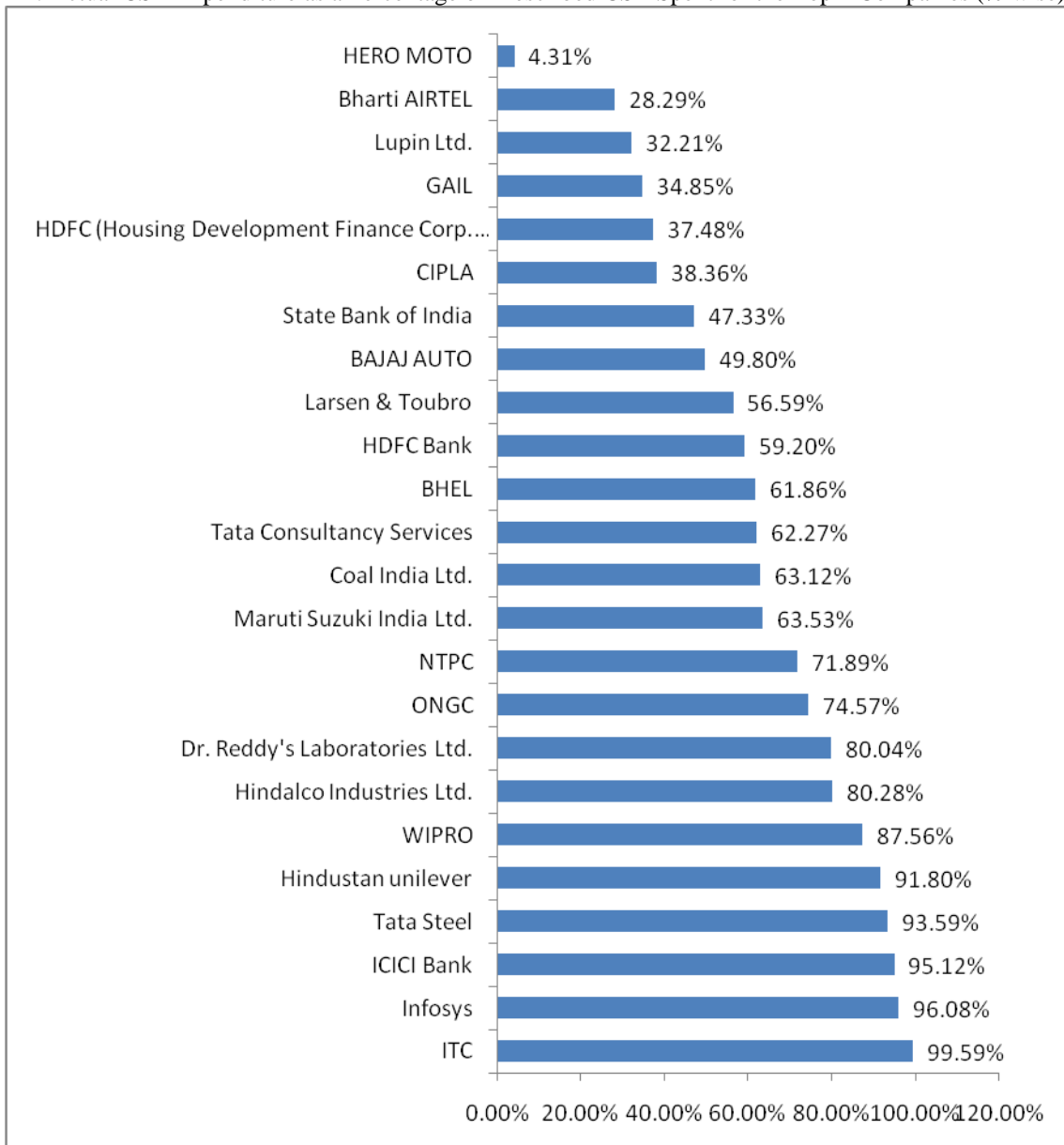
**ANNEXURES  
FIGURES**



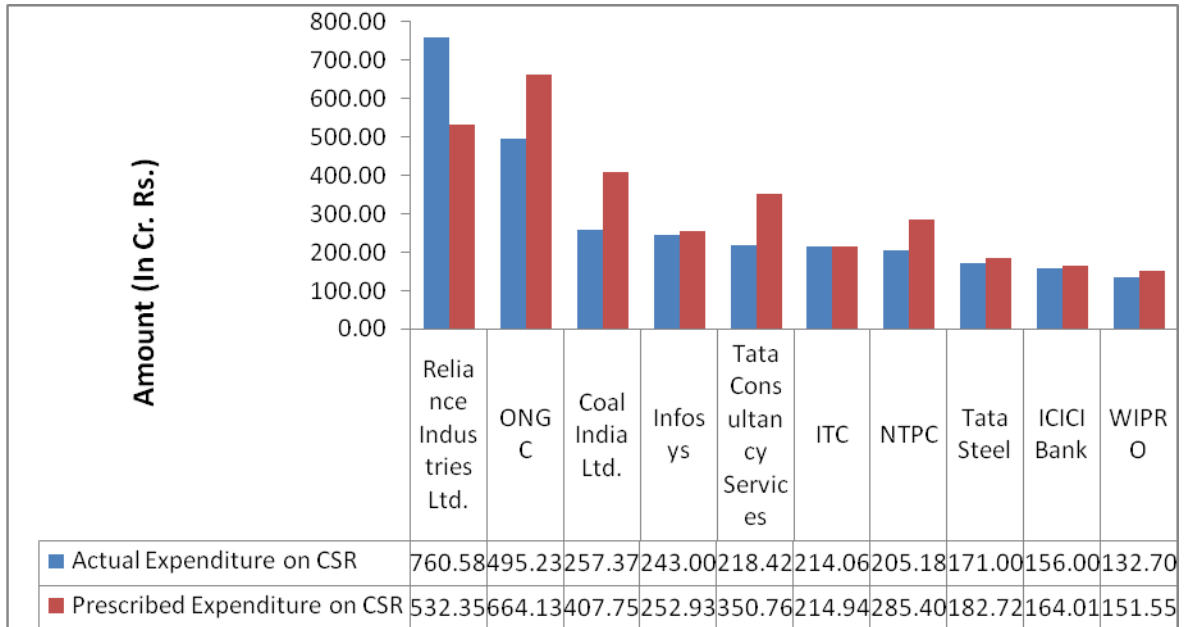
**F1:** Actual CSR Expenditure as a Percentage of Prescribed CSR Amount for 28 companies in the BSE-SENSEX



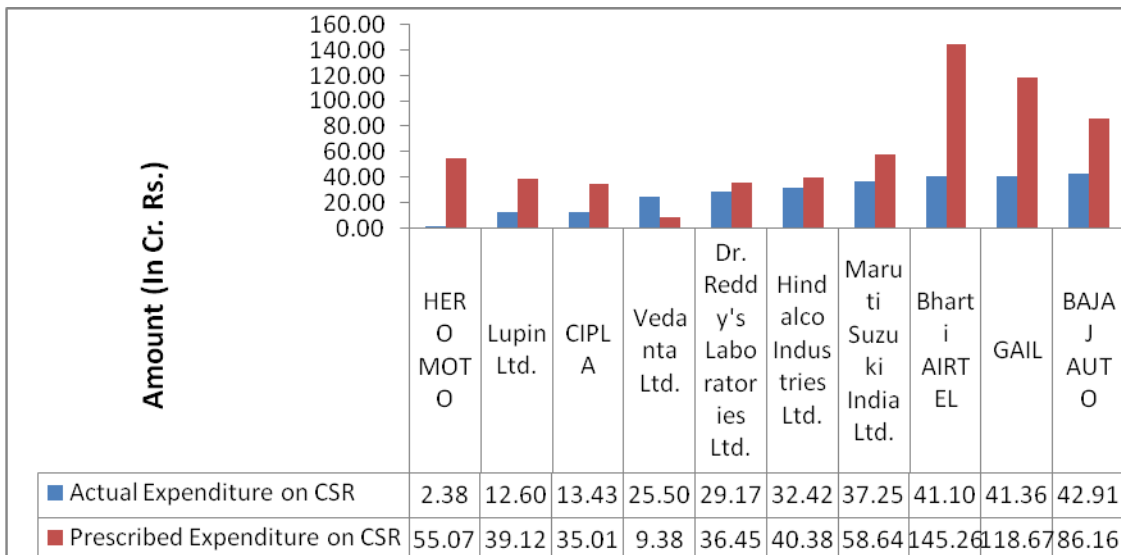
**F2:** Actual CSR Expenditure as a Percentage of Prescribed CSR Spent for the Top 4 Companies (% wise)



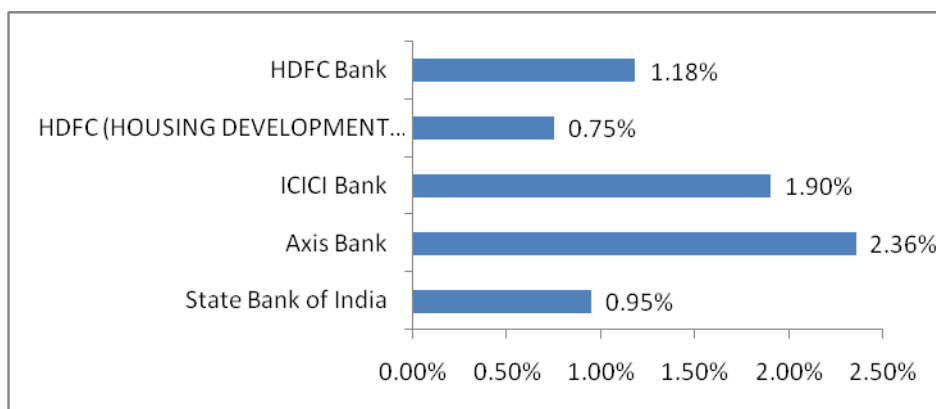
**F3:** Actual CSR Expenditure as a Percentage of Prescribed CSR Spent for the Companies that spent less than the Prescribed Amount (% wise)



F4: Absolute Values of Actual CSR Expenditure compared to the Prescribed Expenditure on CSR for Top 10 Companies (In terms of Absolute Expenditure)

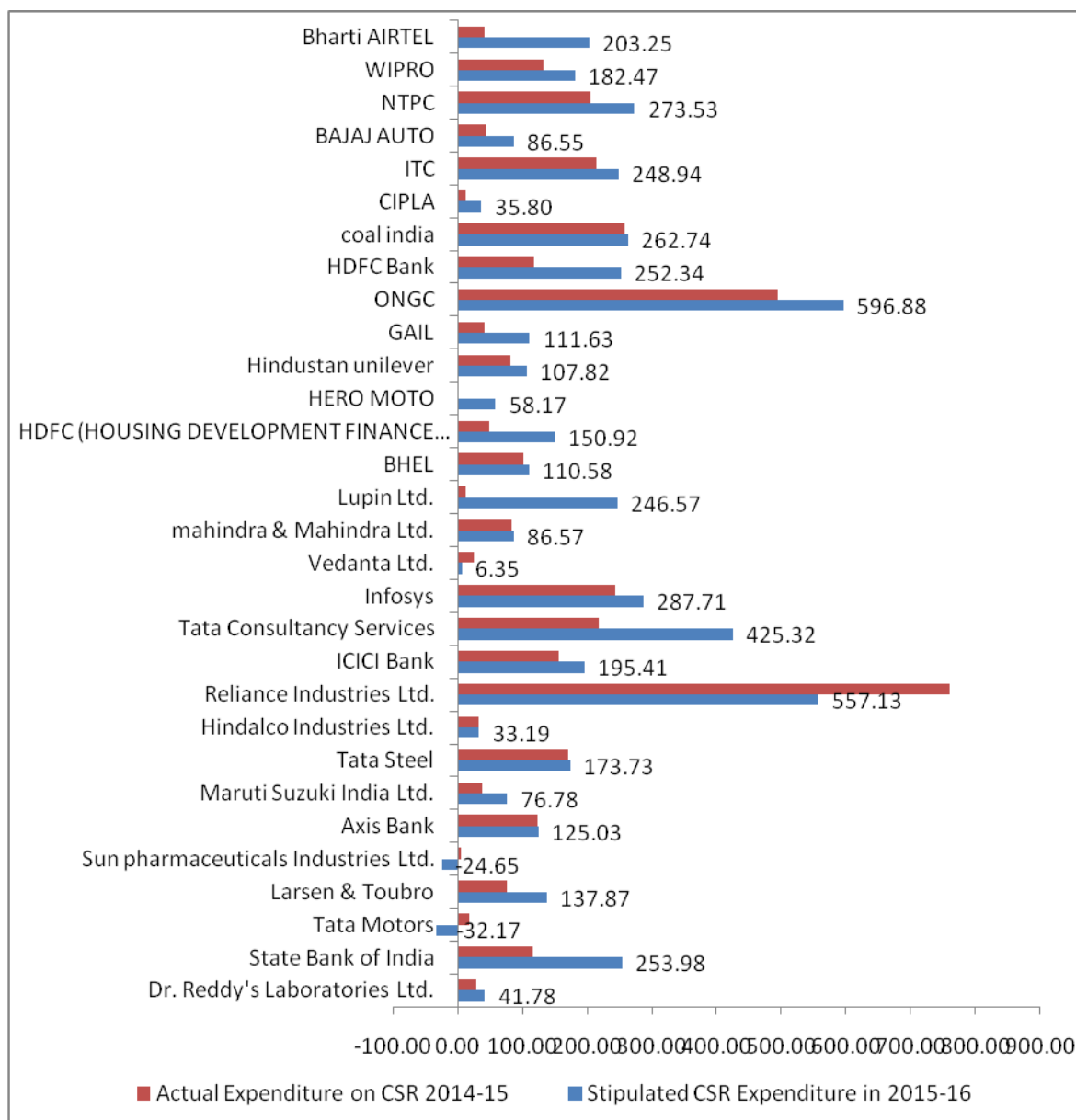


F5: Absolute Values of Actual CSR Expenditure compared to the Prescribed Expenditure on CSR for Bottom 10 Companies (In terms of Absolute Expenditure)



F6: CSR Expenditure as a Percentage of the Average of Last 3 Year's Profits for Banking & Finance Sector Companies





F7: Stipulated Expenditure on CSR in the year 2015-16 as compared to current year's actual expenditure

**TABLES**

T1. The Table below lists the 30 companies constituting the BSE-SENSEX as on 29<sup>th</sup> November, 2015 in the order of their turnovers. Out of them TATA Motors and Sun Pharma do not form part of our analysis having incurred losses in the year 2014-15 and with negative average profits of the preceding 3 years, they are excluded from the purview of Section 135 of Companies Act, 2013.

Company Name	Profits before Tax for the Year 2014-15 (In Crore Rs.)
Dr. Reddy's Laboratories Ltd.	2059.90
State Bank of India	13101.5720
Tata Motors	-3974.72
Larsen & Toubro	6701.22
Sun pharmaceuticals Industries Ltd.	-1558.97
Axis Bank	7357.8223
Maruti Suzuki India Ltd.	4868.2
Tata Steel	8508.89

Hindalco Industries Ltd.	1246.91
Reliance Industries Ltd.	29468
ICICI Bank	11175.3549
Tata Consultancy Services	24549.97
Infosys	16,798.00
Vedanta Ltd.	1967.47
Mahindra & Mahindra Ltd.	4168.89
Lupin Ltd.	32,121.90
BHEL	2140.01
HDFC (Housing Development Finance Corp. Ltd.)	8624.14
HERO MOTO	3328.82
Hindustan Unilever	6,187.42
GAIL	4284.36
ONGC	26555.235
HDFC Bank	15,328.72
Coal India Ltd.	13,651.89 <sup>4</sup>
CIPLA	1539.97
ITC	13997.52
BAJAJ AUTO	4,084.79
NTPC	10,546.65
WIPRO	10557
Bharti AIRTEL	15655.3

T2. The Table below shows how the summarized values for Coal India Ltd. have been taken for the given paper from the Annual Reports for the year 2014-15 available for its subsidiaries.

Coal India Ltd. Subsidiaries	Average Profits of last 3 years (In Cr. Rs.)	2% of the Average Profits (In Cr. Rs.)	Actual Expenditure on CSR (In Cr. Rs.)
Central Coalfields Ltd.	2393.22	47.86	48.87
Eastern Coalfields Ltd.	1384.95	27.70	24.85
Mahanadi Coalfields Ltd.	5698.42	113.97	61.30
Northern Coalfields Ltd.	4013.99	80.28	61.77
South Eastern Coalfields Ltd.	6498.64	129.97	40.43
Western Coalfields Ltd.	398.41	7.97	20.15
<b>TOTAL</b>	<b>20387.62</b>	<b>407.75</b>	<b>257.37</b>

T3. The Table below lists the 28 companies included in the study, their average profits of last 3 years (2011-12 to 2013-14) computed as per Profits before taxes, the prescribed CSR expenditure and the expenditure actually incurred by the companies.

Company	Average Profits of last 3 years (In Cr. Rs.)	2% of the Average Profits (In Cr. Rs.)	Actual CSR Expenditure (In Cr. Rs.)
Dr. Reddy's Laboratories Ltd.	1822.27	36.45	29.17
State Bank of India	12234.48	244.69	115.80
Larsen & Toubro	6763.13	135.26	76.54

<sup>4</sup> The figure for Coal India Ltd. Profits for the year 2014-15 have been taken from moneycontrol.com due to the unavailability of a consolidated Annual Report for the year.

Axis Bank	5213.10	104.26	123.22
Maruti Suzuki India Ltd.	2931.90	58.64	37.25
Tata Steel	9135.82	182.72	171.00
Hindalco Industries Ltd.	2019.14	40.38	32.42
Reliance Industries Ltd.	26617.33	532.35	760.58
ICICI Bank	8200.40	164.01	156.00
Tata Consultancy Services	17537.99	350.76	218.42
Infosys	12646.33	252.93	243.00
Vedanta Ltd.	468.76	9.38	25.50
Mahindra & Mahindra Ltd.	4140.80	82.82	83.24
Lupin Ltd.	1955.87	39.12	12.60
BHEL	8249.43	164.99	102.06
HDFC (HOUSING DEVELOPMENT FINANCE CORP.LTD.)	6560.18	131.20	49.18
HERO MOTO	2753.72	55.07	2.38
Hindustan Unilever	4485.10	89.70	82.35
GAIL	5933.37	118.67	41.36
ONGC	33206.28	664.13	495.23
HDFC Bank	10011.94	200.24	118.55
Coal India Ltd.	20387.62	407.75	257.37
CIPLA	1750.55	35.01	13.43
ITC	10746.94	214.94	214.06
BAJAJ AUTO	4308.15	86.16	42.91
NTPC	14269.81	285.40	205.18
WIPRO	7577.30	151.55	132.70
Bharti AIRTEL	7262.80	145.26	41.10