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FROM CORPORATE 'SOCIAL RESPONSIBILITY' TO 'LEGAL RESPONSIBILITY' – A COMPARATIVE STUDY

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ABSTRACT

Clause 135, Company's Act 2013 changed the level playing field for organizations engaged in CSR Activities. No more the sheer amount of capital invested by the Big Businesses will act as a benchmark, instead it is the 2% net profit earned from the average of three previous years which will be considered for comparison. Where big players are finding difficult to plan and execute their majestic projects to meet the benchmark, small players faces the lack of necessary resources and instable profit margin to execute theirs. In this article, an attempt is made to compare the CSR Reports (2013-14, 2014-15 & 2015-16) of top five and bottom five organizations in terms of net profit earned in financial year 2014-15 using deductive thematic analysis. The results from 30 CSR Annual Reports thus analysed, identified the shift in thematic frameworks of CSR initiative in India (specific to said act) and thereby providing constructive feedback to further enhance the provisions pertaining to CSR which suits both the big players and those who just qualify at the margin. The approach and activities undertaken by both the big and small players in the field to meet the expectations of the Company's Act 2013 is also discussed.

INTRODUCTION

There has been no single universally accepted definition of CSR. Instead there exist plethora of them with many ideological similarities and differences. Comprehensively, most of them emphasize the impact of businesses over society and societal expectations from such businesses. Thus, the root of CSR lies in philanthropy specifically, philanthropically executed social work of big businesses within their adjoining manufacturing plant. These activities were originally carried out to generate goodwill about the organization at large within the community it operated. Though carried out through businesses, CSR as an activity could not remain devoid of social concerns at large. The advent of concepts such as socially responsible business, environmental obligations and sustainable development has brought about a sea change in the way we looked at CSR. The concept of CSR is fast evolving. Carroll (1999) traced evolution of the CSR construct beginning in the 1950s and its alternative thematic frameworks triggered by various era specific events.

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New concepts which were closely related to CSR were introduced; stakeholder theory, business ethics, corporate governance, responsiveness, corporate social performance, and corporate citizenship (Gautam & Singh, 2010). CSR has taken inroads from obligations of businessmen (Bowen, 1953) to enhancing socio-economic welfare (Frederick, 1960) to economic, legal, ethical and discretionary (philanthropic) expectations (Carroll, 1979) to communicating social and environmental effects (Gray, Owen & Maunders, 1987) to being economically and environmentally sustainable (Lee, 1997) to finally being grown as the business issue of the 21st century. The emphasis on different aspects of CSR not only varied with time but also differs on an international platform. Various international organizations with the likes of World Bank, European Commission, and World Business Council for Sustainable Development, etc. had given its due care in understanding CSR and attempted to bridge a common platform for CSR framework. CSR to one is contribution to economic sustainable development to another is continuing commitment by business and to other is an integration of social and environmental concerns. Arora and Puranik (2004) classified the various available ideologies of corporate responsibility into four models viz.; ethical (voluntary commitment by companies), statist (state ownership and legal requirement), liberal (limited to private owners) and stakeholder (companies respond to the need of stakeholders) depending upon the varying emphasis given to each. Each of the models as suggested by their respective champions provides a valuable insight about CSR. It remains prudent that companies will have to identify all its stakeholders and be voluntarily committed towards public welfare in general and stakeholders in particular. Unless responsibility does not arise of its own, that motivation to carry out CSR related activities will negate yielding negligible results. Similarly, states have a role in providing pathways, guidelines and legal consultancy to smoothen the process of CSR activities to be carried out by these companies. Thus, CSR has been drawn, edited, transformed and changed by various individuals and organizational units in a way that suited their requirement.

CSR in India: CSR in India is not a new addition. Big business houses such as Tata, Birla, etc have contributed for the society time and again in a way. They may have not fancied it with the concept of CSR specifically. Instead concepts such as charity, nationalism and social obligations were more common. It remained voluntary as with the rest of the world until recently being mandated by the government.

In a nutshell as per CII-PwC report (2014) route of CSR in India is as described below;

- Traditionally linked with philanthropic, social duty or charity activity.
- No deliberations.
- Limited Documentation.
- Nationalist in character, embedded in the idea of trusteeship.

Thus, CSR Practice (as a core construct) rested on a liberal notion of voluntary engagement in India until was made binding responsibility after the introduction of Company’s Act 2013. The legal route of CSR in India took its baby step in the year 2000, when for the first time Ministry of Corporate Affairs (MCA) discussed CSR in ‘Report of the Task Force on Corporate Excellence’. It took nine years since its first formal discussion on CSR to bring it back on table and giving it a voluntary status. The last few years though had been eventful bringing qualitative and quantitative changes within the realms of CSR. Two years later in 2011, MCA urged companies to adopt all the nine principles it formulated as guidelines to conduct CSR activities on the basis of ‘apply-or-explain’ principle. In the year 2012, Securities and Exchange Board of India (SEBI) made it mandatory to top 100 organizations of India to disclose their CSR activities in separate Business Responsibilities Report accompanied with Annual Reports. India however has more specifically turn around the cards by being the first country ever to have adopted the Statist Model of CSR through Companies Act, 2013 making it mandatory for the companies in India to spend and report their CSR activities periodically subject to fulfilment of certain statutory provisions.

Thus, one can very easily trace that the last few years has brought about marked shifts in trends that CSR in India underwent bringing in three different phases marked by;

- **Phase I** – Voluntary Reporting & Voluntary Spending (Before 2012)
- **Phase 2** – Mandatory Reporting & Voluntary Spending (Between 2012 – 2013)
- **Phase 3** – Mandatory Reporting & Mandatory Spending (After 2013)

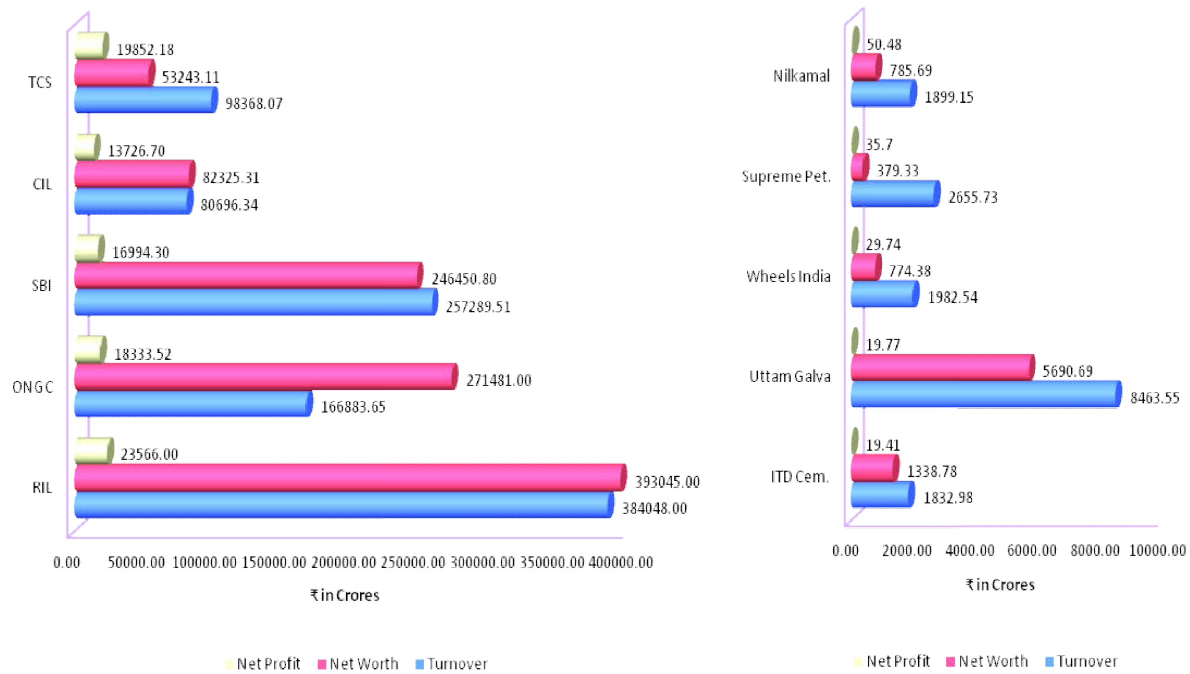
Mandatory provisions of the Clause 135 of the said Act asks companies with a net worth of □500 Crores or turnover of □1000 Crores or net profit of □5 Crores to spend 2% of their average net profit of last three years in accomplishing their CSR policies framed as per the provisions under the act. Companies qualifying to undertake CSR activities are suggested to do so either on their own, or through their non-profit foundations, or through independently registered non-profit organizations with three years track records or by pooling their resources with other organizations. Appointment of committee of three directors (one independent director) and formulating, recommending and approving a CSR policy from the committee so formed are few other statutory provisions of the said act. While answer to this quest lies in future, it is clear that the organizations will have to shift their perceptions towards CSR to bring about a sync with the statutory provisions of the act if they ought to successfully implement all its provisions. Therefore, the present study attempts to explore the change in the perception of Corporate India towards CSR brought about by the introduction of said act.

Research Questions: The companies Act 2013 became applicable from the fiscal year 2014-15. Thus, technically, Organizations in India produce their first CSR Annual Report based on Section135 of Companies Act 2013. CSR Annual Report of 2013-14 by top 100 companies at least, which was not binding by Companies Act 2013 was the last such report of its kind based on SEBI’s instruction of Mandatory Reporting but Voluntary Spending. Organizations in India in their CSR Annual Report of 2014-15 would have put considerable effort to adapt to the new legal framework which is unique to India. Thus, differentiating CSR Annual Reports of 2013-14 with 2014-15 will give insights on the transitional shift of CSR as a discipline in India from a phase characterize by Mandatory Reporting and Voluntary Spending to Mandatory Reporting and Mandatory Spending. Additionally, 2015-16 Annual Reports will characterize the initial learning in terms of adopting and adapting to the said act. Any change in strategy, reporting and spending of CSR Activity revealed from the study will serve handy to new and small players which become eligible at the margin to take up CSR Programme.

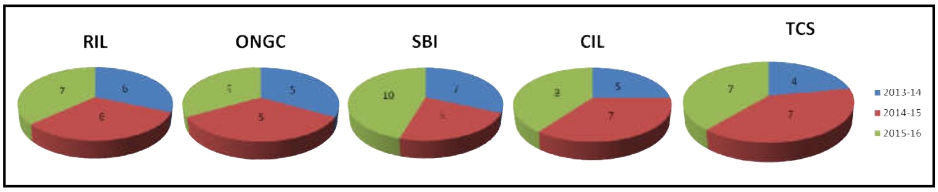
- Did Clause 135 of Companies Act, 2013 bring any changes to the way organizations in India perceive CSR?
- What changes does Clause 135 of Companies Act, 2013 brought to the way organizations in India spend and report on CSR Activities?
- Does Clause 135 of Companies Act, 2013 causes any difference in terms of how small and big players in India spend and report their CSR initiatives?
- Has there been development among organizations in the last two years in terms of adopting and adapting the Clause 135 of Companies Act, 2013?

RESEARCH METHODOLOGY

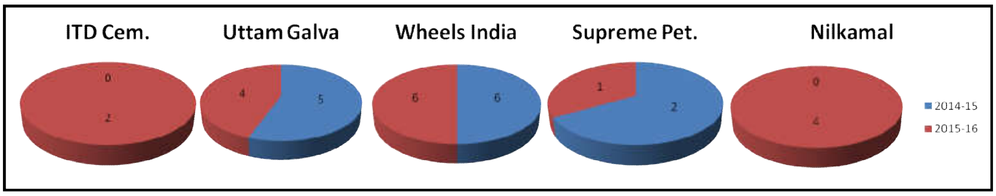
Data Sample: Study data consist of 30 Annual/CSR Reports of 2013-14, 2014-15& 2015-16 of top 5 and bottom 5 performing organizations in India in terms of average of the previous 3 years Net Profit earned for the financial year 2014-15.



Graph No. 1. Net Profit, Total Assets & Turnover for 2014-15 of the Final Data Sample



Graph No. 2. Pie Chart Showing Number of Thrust Areas Top Five Organizations were involved through CSR Activities during 2013-14, 2014-15 & 2015-16



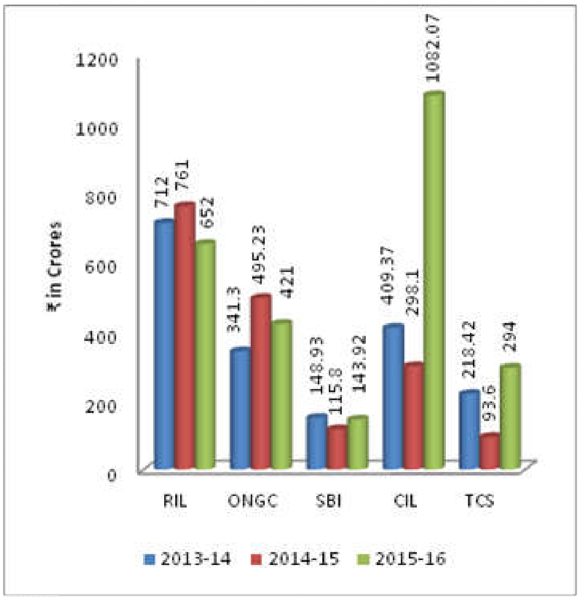
Graph No. 3. Pie Chart Showing Number of Thrust Areas Bottom Five Organizations were involved through CSR Activities during 2014-15 & 2015-16

This list was worked out from Economics Times Top 500 list of Companies for the year 2014-15. Only those top and bottom five companies were taken into consideration which consistently managed to figure in Economics Times Top 500 list of Companies for the year 2014-15, 2013-14, 2012-13 & 2011-12 and has a net worth of □500 Crores or turnover of □1000 Crores or net profit of □5 Crores in the year 2014-15. Both top (Reliance Industires Ltd. – RIL, Oil & Natural Gas Corporation – ONGC, State Bank of India – SBI, Coal India Ltd. – CIL, and Tata Consultancy Services – TCS) and bottom (ITD Cementation Ltd. – ITD Cem., Uttam Galva Steels Ltd. – Uttam Galva, Wheels India Ltd. – Wheels India, Supreme Petrochemicals Ltd. – Supreme Pet., & Nilkamal Ltd. – Nilkamal) performing companies so chosen became the part of the current study because of the following reasons;

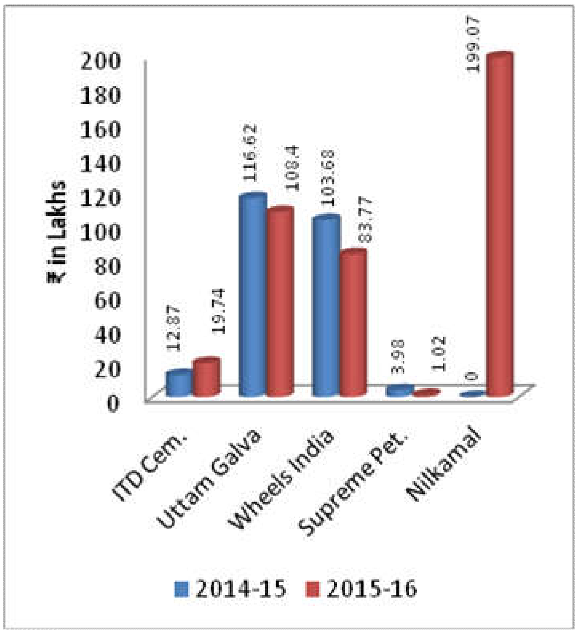
- The Report of the High Level Committee recommended that initial three years will be a “period of learning” for all the stakeholders specifically for smaller companies (Ministry of Corporate Affairs, GOI 2015).
- Additionally the top performers in the list are the older players in CSR and hence expected to rise early over the learning curve.
- And those lying on the bottom rung will have to struggle more.
- Secondary data so obtained from the CSR Annual Reports were subjected to Deductive Thematic Analysis.

RESULTS

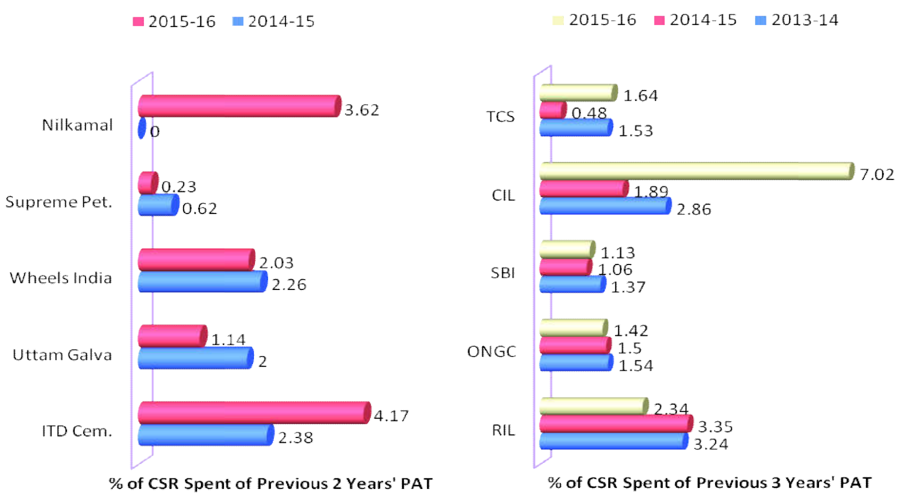
The results of the current study was analyzed in two stages; viz.; CSR Approach and CSR Activities (Reporting & Spending) of both top and bottom five organizations during 2013-14, 2014-15 & 2015-16.



Graph No. 4. CSR Spent by Top 5 Organizations under study



Graph No. 5. CSR Spent by Bottom 5 Organizations under study



Graph No. 6. % of CSR Spent of Previous 3 Years, PAT by Bottom & Top 5 Organizations

CSR Approach: It was observed that all ten organizations chosen for the study used their CSR Policy documents framed in 2014-15 to map their CSR Activities with the Schedule VII of the Section 135, Companies Act 2013. Two organizations among top five which stood as an exception to this rule were State Bank of India (SBI) & Coal India Ltd. (CIL). CIL had a different plan altogether prior to Companies Act 2013 (as prescribed for Central Public Enterprises) which was later changed (but not limited to) to accommodate Schedule VII of Clause 135 of the Companies Act, 2013. Apart from trying to meet conditions under the said act, CIL happens to be generous enough to put an additional condition (production, whichever is higher) to its CSR commitment over and above the said act. As against CIL, SBI on the other hand takes pride in spending more than 1% of the total PAT of the previous year.

The CSR policy documents of SBI had not been changed to accommodate the said act even in their Annual Report of 2015-16. Apart from policy documents organizations also showed a fair similarity in terms of major thrust areas within which they undertook their CSR Activities. Education, Healthcare & Environment were the top three thrust areas within or around which both type of organizations within top and bottom rung were engaged in CSR Activities. It is these thrust areas which were common across time horizon i.e., in each financial years under the current study. SBI has diversified its CSR Activities in 10 major thrust areas (more than any other organizations) in the year 2015-16 from 7 & 5 thrust areas in 2013-14 & 2014-15 respectively. On the other hand, ONGC appears to be the most consistent organization in terms of number of thrust areas it majorly scaled up its CSR Activities viz.; 5 in all three financial years.

CSR Activities: It was observed that organizations identified at the top rung did mentioned about their respective CSR policy in Annual Reports of 2013-14 as they were also among the top 100 organizations which were supposed to mandatorily report their CSR Activities by SEBI in 2013-14 in their Business Responsibility Report. On the other hand, organizations at the bottom rung started to report their respective CSR related policy from the Annual Reports of 2014-15. As per the guidelines provided under said act, organizations irrespective of being from top or bottom rung started reporting their CSR activities under Director's Report in a prescribed form and annexure.

Top CSR spending organizations did produced a separate CSR Report within their Annual Reports of 2014-15 & 2015-16 apart from the designated section in Director's Report. Among top five CSR spending organization RIL stood tall during 2013-14 & 2014-15 in terms of both actual amount spent and percent of CSR spent of previous three years Net Profit (Profit after Tax – PAT). But it was CIL which took the lead in 2015-16 by spending whooping ₹1082.07 Crores (7.02% of the previous three years PAT). RIL can be predicted to initiating scaling down of their CSR spent to 2%. SBI, ONGC & TCS didn't rise above 2% in any of the three years under purview. Among bottom five CSR spending organizations ITD Cementation was the highest CSR spending organization in both terms, Wheels India was the consistent performer and Nilkamal Ltd. scaled up its CSR spending in 2015-16 in an attempt to cover the unspent amount from previous year. Uttam Galva & Supreme Petrochemicals were the underperformer among the lot.

DISCUSSION

Organizations have changed their strategic intent in terms of values governing their CSR Activities. The CSR Policy and policy specific documents continued with the same vision, mission, objectives and goals which they used in their previous documents but they happens to be engaged more in the attempt to map their CSR activities with the Schedule VII of the Section 135, Companies Act 2013. The said Schedule seems to be carefully crafted and prepared wide enough to accommodate all major thrust areas in which organizations were engaged previously while executing their CSR Policy. Thus, with the exceptions of Supreme Petrochemicals Ltd. every organization in the current study irrespective of being from top or the bottom rung of the ladder either scaled up their thrust areas or continued with the same number of thrust areas to carry on their CSR activities. Schedule VII also managed to provide precise and concise guidelines for organizations to scale their CSR activities noticeably.

Organizations identified at the top rung did mentioned about their respective CSR policy in Annual Reports of 2013-14 as they were also among the top 100 organizations which were supposed to mandatorily report their CSR Activities by SEBI in 2013-14 in their Business Responsibility Report. On the other hand, organizations at the bottom rung started to report their respective CSR related policy from the Annual Reports of 2014-15. As per the guidelines provided under said act, organizations irrespective of being from top or bottom rung started reporting their CSR activities under Director's Report in a prescribed form and annexure. Even though funds were allocated and thrust areas were identified, majority of the organization under the study struggle to meet the target spending. Many senior managers admit that they are still struggling to make the business case for long-term investments in sustainability and CSR Majmudar et al. (2015). It is evident that even the older players (all the top five organizations under study) is finding it difficult to transit from the phase of mandatory reporting and voluntary spending to Mandatory Reporting and Mandatory Spending. Only two (RIL & CIL) from the list of top five organizations listed to be doing well into their respective CSR field managed to spend more than the respective legal requirement. This is a case with organizations having hundred's of crores in their kitty.

Company's Act 2013 changed the level playing field for organizations engaged in CSR Activities. No more the sheer amount of capital invested by the Big Businesses will act as a benchmark, instead it is the 2% net profit earned from the average of three previous years which will be considered for comparison. As Sarkar & Sarkar (2015) noted that while rest of the countries around the world are still struggling to cornerstone the debate on whether to mandate the CSR Reporting, India took over the reins by mandating the spending. With older players struggling it will be interesting to note how small and relatively new players enters into the CSR Club taking the learning forward. With the availability of limited human resources and fluctuating profit, CSR activities of SMEs in the past were not optimally delivered (CII – PwC, 2014).

Conclusion

Organizations have changed their strategic intent in terms of values governing their CSR Activities.

No more are they guided by their vision on CSR instead the legal requirements that are binding. They are either scaling up/down the volume of the CSR activity to meet the mandatory 2% PAT requirement. Still, while organizations have caught up with the mandatory reporting, they are struggling with the mandatory spending. The Report of High Level Committee recommendations to observe the first three years as a learning period may come handy to those struggling. While bigger players with the required resources (human and stable profit) might adapt, smaller and new players would need more time to accommodate and hence might require an additional period of learning as their challenges are rather more difficult with unavailability of likely resources and instable profit margin. The CSR Activities which organizations were already engaged was well mapped by the Ministry of Corporate Affairs through its Schedule VII, ensuring they are not toiling around this front.

Future Research: CSR Research in India should look to explore the following areas:

- Current Research needs to be extended to include all the three phases of legal framework of CSR in India i.e.,
  - Phase I – Voluntary Reporting & Voluntary Spending
  - Phase II – Mandatory Reporting & Mandatory Spending
  - Phase III – Mandatory Reporting & Mandatory Spending
- To understand the broader picture of perceptual changes in relation to CSR Activities, same research needs to be duplicated at a larger scale including more numbers of organizations and their respective CSR Annual Reports.
- Furthermore, extending the study to new and small players who become eligible at margin and are not consistent in the list to take up CSR Programme i.e., those which will face the problem of regular switch on & switch off phenomena can bring in fresh insight to challenges specific to them.
- As Report of the High Level Committee (MCA, 2015) observed, the first three years will be necessarily a *'period of learning'* and hence analysis of the CSR Annual Reports of 2016-17 will further reveal how successfully the Corporate India adapted with the said act.
- An attempt to personally meet the directors of the CSR Committee of selected organizations, ground workers and beneficiaries of CSR activities to explore the problems they face at the ground will further bring in the human touch to such studies.

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