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## Mandatory Corporate Social Responsibility As A Vehicle For Reducing Inequality: An Indian Solution For Piketty And The Millennials

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# MANDATORY CORPORATE SOCIAL RESPONSIBILITY AS A VEHICLE FOR REDUCING INEQUALITY: AN INDIAN SOLUTION FOR PIKETTY AND THE MILLENNIALS

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## INTRODUCTION

The income inequality debate is in resurgence. Thomas Piketty's *Capital in the Twenty-First Century*<sup>1</sup> gained worldwide attention, and in doing so, reframed the wealth inequality debate.<sup>2</sup> Many leaders, including President Barack Obama and Pope Francis, believe income inequality to be the issue of our time.<sup>3</sup> As President Obama said in the 2014 State of the Union Address, "after four years of economic growth, corporate profits and stock prices have rarely been higher, and those at the top have never done better. But average wages have barely budged. Inequality has deepened."<sup>4</sup>

In an interview with *The Economist*, President Obama expanded on this theme:

[T]he broader trend [is] an increasingly bifurcated economy where those at the top are getting a larger and larger share of GDP, increased productivity, corporate profits, and middle-class and working-class families are stuck. Their wages and incomes are stagnant. They've been stagnant for almost two decades now.<sup>5</sup>

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<sup>1</sup> THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (2014).

<sup>2</sup> See Heidi Moore, *Why is Thomas Piketty's 700-Page Book a Bestseller?*, GUARDIAN (Sept. 21, 2014, 12:00 PM), <http://www.theguardian.com/money/2014/sep/21/-sp-thomas-piketty-bestseller-why>.

<sup>3</sup> See Paul Hannon, *OECD Calls For Tax Overhaul To Tackle Income Inequality*, WALL ST. J. (Apr. 20, 2014), <http://www.wsj.com/articles/SB10001424052702303678404579533202077342892>.

<sup>4</sup> President Barack Obama's State of the Union Address (Jan. 28, 2014), The White House, *available at* <http://www.whitehouse.gov/the-press-office/2014/01/28/president-barack-obamas-state-union-address>.

<sup>5</sup> *The Economist Interviews Barack Obama: The President on Business and Inequality*, ECONOMIST (Aug. 2, 2014, 3:36 PM), <http://www.economist.com/blogs/democracyinamerica/2014/08/economist-interviews-barack-obama-0>.

Indeed, concern about inequality crosses the partisan divide; a recent Pew Research Center poll found that “majorities of 60% or more among Republicans and Democrats across the ideological spectrum agree that inequality is on the rise.”<sup>6</sup> This level of political attention is no coincidence: the CIA World Factbook shows that the Gini co-efficient for the U.S. is forty-five. This metric, which measures national inequality and income distribution, puts the United States in the same company with some of the world’s poorest nations, including Cameroon, Madagascar, Rwanda, Uganda, and Sri Lanka, and in worse company than Burkina Faso, Bangladesh, Burundi, Malawi, and Ethiopia.<sup>7</sup>

In the United States, the numbers are distressing. A recent Organization for Economic Co-operation and Development (OECD) report shows that the top 1% of income earners have captured 47% of overall income growth over the last thirty years.<sup>8</sup> Strikingly, the top 10% of income earners accounted for more than half of all income in 2012—the highest level ever recorded.<sup>9</sup> In another study, Piketty and a collaborator found that the top 1% of income earners took home more than one-fifth of all income—one of highest levels since 1913.<sup>10</sup> Household income grew 275% for the top 1% between 1979 and 2007, whereas it only grew 18% for the bottom 20% of the

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<sup>6</sup> See Juliana Horowitz, *Inequality, Poverty Divide Republicans More Than Democrats*, PEW RESEARCH CENTER (Jan. 29, 2014), <http://www.pewresearch.org/fact-tank/2014/01/29/inequality-poverty-divide-republicans-more-than-democrats/>.

<sup>7</sup> *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/fields/2172.html> (last visited Feb. 19, 2015).

<sup>8</sup> OECD, FOCUS ON TOP INCOMES AND TAXATION IN OECD COUNTRIES: WAS THE CRISIS A GAME CHANGER? 3 (2014), *available at* <http://www.oecd.org/social/OECD2014-FocusOnTopIncomes.pdf>.

<sup>9</sup> Anne Lowrey, *The Rich Get Richer Through The Recovery*, N.Y. TIMES (Sept. 10, 2013, 3:25 PM), <http://economix.blogs.nytimes.com/2013/09/10/the-rich-get-richer-through-the-recovery/>.

<sup>10</sup> *Id.*

population.<sup>11</sup> Even more spectacularly, the OECD report shows that the top 0.1% of U.S. earners accounted for 8% of total pre-tax incomes. This demonstrates that disparities exist even among the rich.<sup>12</sup> Further, these disparities extend beyond income; although half of U.S. families own stocks, about 90% of the stocks are in the hands of the top 10%.<sup>13</sup>

While the average American has yet to recover from years of recession after 2008, corporate profits are at record levels relative to the Gross Domestic Product (GDP). Figures released by the U.S. Department of Commerce's Bureau of Economic Analysis show that corporate profits after tax were at a record \$1.686 trillion in 2013.<sup>14</sup> Coevally, employee compensation continues to fall.<sup>15</sup> Wages as a percentage of GDP have fallen from about 47% in 1980 to 42.5% in 2013, whereas corporate profits as a share of GDP grew from about 4% to 11% during the same period.<sup>16</sup>

Despite their prosperity, U.S. corporations continually find loopholes to avoid paying taxes and lobby Congress to strengthen business laws and incentives.<sup>17</sup> Meanwhile, the business income tax revenue remains steady at 2% of GDP.<sup>18</sup> Even with historically high profits, corporate taxes have also fallen from about 30% of federal

<sup>11</sup> Kimberly Amadeo, *Income Inequality in America*, ABOUT NEWS (Feb. 14, 2014), <http://useconomy.about.com/od/suppl1/a/income-inequal.htm>

<sup>12</sup> OECD, *supra* note 8, at 2.

<sup>13</sup> Lowrey, *supra* note 9.

<sup>14</sup> News Release, U.S. Dep't of Commerce, Bureau of Econ. Analysis, Gross Domestic Product: Fourth Quarter and Annual (Third Estimate); Corporate Profits: Fourth Quarter and Annual 2013 (Mar. 27, 2014), *available at* [http://www.bea.gov/newsreleases/national/gdp/2014/pdf/gdp4q13\\_3rd.pdf](http://www.bea.gov/newsreleases/national/gdp/2014/pdf/gdp4q13_3rd.pdf).

<sup>15</sup> Tim Fernholz, *Two Charts To Ruin Labor Day*, QUARTZ (Sept. 2, 2013), <http://qz.com/120261/two-charts-to-ruin-labor-day-us-labor-is-worth-less-than-ever/>.

<sup>16</sup> *Id.*

<sup>17</sup> See, e.g., David Gelles, *Businesses Are Winning Cat-and-Mouse Tax Game*, N.Y. TIMES, (Aug. 28, 2014, 7:45 PM), <http://dealbook.nytimes.com/2014/08/28/businesses-find-ways-to-avoid-corporate-taxes-but-a-fix-seems-unlikely/>.

<sup>18</sup> *Id.*

revenue after World War II to less than 10% currently.<sup>19</sup> In 2011, the amount of money collected as corporate taxes was just 2.6% of GDP—the eleventh lowest of twenty-seven wealthy countries.<sup>20</sup>

Many corporations also pay far less than the American corporate tax rate of 35%.<sup>21</sup> For instance, Apple had a worldwide tax rate of just 9.8%.<sup>22</sup> Fifty-seven companies in the S&P 500—including Verizon, Metlife, Agilent Technologies, Seagate Technology, Bristol-Myers Squibb, Eaton, and News Corp—had an effective tax rate of 0%.<sup>23</sup> All told, according to Citizens for Tax Justice, the U.S. loses about \$90 billion in tax revenues due to avoidance strategies.<sup>24</sup>

Further, evidence indicates that the level of inequality currently present in American society exceeds what most citizens desire.<sup>25</sup> A survey conducted by Professors Michael Norton and Dan Ariely showed that more than 92% of 5,500 randomly selected American citizens preferred an inequality level at Swedish levels rather than U.S. levels.<sup>26</sup> Respondents also had a much more optimistic view of inequality in the United States than what the numbers actually suggest; the respondents estimated that the top 20% owned only 59%

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<sup>19</sup> *Id.*

<sup>20</sup> James O'Toole, *GAO: U.S. Corporations Pay Average Effective Tax Rate of 12.6%*, CNN MONEY (July 1, 2013, 6:08 PM), <http://money.cnn.com/2013/07/01/news/economy/corporate-tax-rate/>.

<sup>21</sup> See Charles Duhigg & David Kocieniewski, *How Apple Sidesteps Billions in Taxes*, N.Y. TIMES (Apr. 28, 2012), [http://www.nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html?pagewanted=all&\\_r=1&](http://www.nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html?pagewanted=all&_r=1&).

<sup>22</sup> *Id.*

<sup>23</sup> Matt Krantz, *Large Companies Find Ways to a Zero Tax Rate*, USA TODAY, (Feb. 19, 2014), <http://www.usatoday.com/story/money/business/2013/10/23/big-companies-pay-no-taxes/2480281/>.

<sup>24</sup> See Kevin Drawbaugh & Patrick Temple-West, *Most Big U.S. Companies Use Offshore 'Tricks' to Avoid Taxes-Activists*, REUTERS (June 5, 2014, 5:27 PM), <http://www.reuters.com/article/2014/06/05/us-usa-tax-avoidance-idUSKBN0EG22D20140605>.

<sup>25</sup> See Michael Norton & Dan Ariely, *Building a Better America—One Wealth Quintile at a Time*, PERSPECTIVES ON PSYCHOLOGICAL SCI. 6, 9 (2011).

<sup>26</sup> *Id.* at 10.

of the wealth when the real figure is actually 84%.<sup>27</sup>

Even more interesting were respondents' views about the ideal level of inequality. According to the same study, respondents believed the top 20% ought to own just 32% of the wealth in society and are in favor of redistributing wealth to the bottom three quintiles.<sup>28</sup> Moreover, respondents' views were consensual across political, sex, and income divides;<sup>29</sup> this might indicate support for changing the status quo. Unsurprisingly, the search for solutions to these issues triggers questions about the role of corporations in society. Even if outstanding corporate profitability appears to be having little visible positive effect on a majority of Americans, debates about corporate social responsibility (CSR) offer promise.

For a long while, it seemed that proponents of the shareholder primacy model had triumphed over those who believed that corporations had duties beyond shareholder wealth maximization.<sup>30</sup> This model suggests that shareholder primacy trumps duties owed by the company to employees, local communities, and other stakeholders.<sup>31</sup> Courts have reflected this idea. For instance, in *Dodge v. Ford Motor Company* the Michigan Supreme Court held:

A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of the directors is to be exercised in the choice of the means to attain that end, and does not extend to a change in the end itself, and to the reduction of profits, or the nondistribution of profits among shareholders in order to devote them to other

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 10-12.

<sup>30</sup> See Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 439 (2001).

<sup>31</sup> Mark J. Roe, *The Shareholder Wealth Maximization Norm and Industrial Organization*, 149 U. PA. L. REV. 2063, 2064 (2001).

purposes.<sup>32</sup>

Milton Friedman is often portrayed as the poster-child for this profit-focused view of corporations. Friedman called social responsibility “a fundamentally subversive doctrine” and rejected its premise:

What does it mean to say that “business” has responsibilities? Only people have responsibilities. A corporation is an artificial person and in this sense may have artificial responsibilities, but “business” as a whole cannot be said to have responsibilities, even in this vague sense.<sup>33</sup>

The U.S. Supreme Court decision, *Burwell v. Hobby Lobby*,<sup>34</sup> changed the debate about the role of the corporation in society. In *Hobby Lobby* the Court stated:

While it is certainly true that a central objective of for-profit corporations is to make money, modern corporate law does not require for-profit corporations to pursue profit at the expense of everything else, and many do not do so. For-profit corporations, with ownership approval support a wide variety of charitable causes, and it is not at all uncommon for such corporations to further humanitarian and other altruistic objectives.<sup>35</sup>

Justice Alito extended the argument noting, “the purpose of this fiction [of corporate personhood] is to provide protection for human beings. A corporation is simply a form of organization used by human

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<sup>32</sup> 170 N.W. 668, 684 (Mich. 1919).

<sup>33</sup> Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES MAGAZINE, Sept. 13, 1970.

<sup>34</sup> 134 S. Ct. 2751 (2014).

<sup>35</sup> *Id.* at 2771.

beings to achieve desired ends.”<sup>36</sup> Further, in a statement that almost seems to challenge Friedman’s view, Justice Alito writes, “Corporations, ‘separate and apart from’ the human beings who own, run, and are employed by them, cannot do anything at all.”<sup>37</sup> The conclusion is that an enervated legal conception of a company as a fiction devoid of social responsibilities is difficult to square in a context where corporate activity imposes negative externalities on society.

The decision in *Hobby Lobby* opened up a debate about CSR among lawyers, and the purpose of this Article is to further that debate by advancing an argument to incorporate CSR into corporate law as a means of tackling externalities imposed by corporate activities—namely inequality. To be sure, many solutions have already been proposed to address the problem of growing inequality, but these ideas are neither pragmatic nor optimal policy prescriptions.

For instance, Piketty argues for an increase in taxation to prevent catastrophic events such as the Great Depression and protracted recessions,<sup>38</sup> proposing a “progressive global tax on capital, coupled with a very high level of international financial transparency.”<sup>39</sup> He claims that “levying confiscatory rates on top incomes is . . . the only way to stem the observed increase in very high salaries” and that “the optimal top tax rate in the developed

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<sup>36</sup> *Id.* at 2767.

<sup>37</sup> *Id.* at 2768.

<sup>38</sup> Thomas Piketty, *A Global Progressive Tax on Individual Net Worth Would Offer the Best Solution to the World’s Spiraling [sic] Levels of Inequality*, THE LONDON SCH. OF ECON. & POL. SCI. BRITISH POL. & POL’Y BLOG (Apr. 17, 2014), <http://blogs.lse.ac.uk/politicsandpolicy/a-global-progressive-tax-on-individual-net-worth-would-offer-the-best-solution-to-the-worlds-spiralling-levels-of-inequality/>. “The ideal solution would be a global progressive tax on individual net worth. Those who are just getting started would pay little, while those who have billions would pay a lot.” *Id.* While Piketty argues this idea as best case scenario he concedes that “it seems quite unlikely that any such policy will be adopted anytime soon. It is not even certain that the top marginal income tax rate in the United States will be raised as high as 40 percent in Obama’s second term.” PIKETTY, *supra* note 1, at 513.

<sup>39</sup> PIKETTY, *supra* note 1, at 515.

countries is probably above 80 percent.”<sup>40</sup> Piketty also states that the objective of his proposal “is not to finance the social state but to regulate capitalism[,] . . . stop the indefinite increase in inequality of wealth[,] . . . [and] impose effective regulation on the financial and banking system in order to avoid crises.”<sup>41</sup> In contrast, the Nobel Prize winning economist Robert Shiller proposes inequality insurance, which “would require governments to establish very long-term plans to make income-tax rates automatically higher for high-income people in the future if inequality worsens significantly, with no other change in taxes otherwise.”<sup>42</sup> Both proposals rely on raising taxes, which is a politically unpopular tactic and upends capitalistic values.

This Article argues that a mandatory CSR spending rule,

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<sup>40</sup> *Id.* at 512.

In order for the government to obtain the revenues it sorely needs to develop the meager US social state and invest more in health and education (while reducing the federal deficit), taxes would also have to be raised on incomes lower in the distribution (for example, by imposing rates of 50 or 60 percent on incomes above \$200,000). Such a social and fiscal policy is well within the reach of the United States.

*Id.* at 513.

<sup>41</sup> *Id.* at 518.

A tax on capital would be a less violent and more efficient response to the eternal problem of private capital and its return. A progressive levy on individual wealth would reassert control over capitalism in the name of the general interest while relying on the forces of private property and competition. . . . If necessary, the tax can be quite steeply progressive on very large fortunes. . . . A capital tax is the most appropriate response to the inequality  $r > g$  . . . .

*Id.* at 532.

<sup>42</sup> Robert J. Shiller, *Inequality Disaster Prevention*, CAPITAL FIN. INT’L (July 10, 2014), <http://cfi.co/banking/2014/07/robert-j-shiller-inequality-disaster-prevention/>.

similar to a law introduced recently in India, could be the answer.<sup>43</sup> We propose that firms<sup>44</sup> spend at least 1% of their annual profits on CSR activities. This places responsibility on businesses to contribute to the fight against inequality,<sup>45</sup> enables engagement between government and private actors to address a collective moral and economic problem, and spawns enormous grassroots entrepreneurial activity funded by the mandatory CSR provision's injection of resources.

Moreover, this proposal is superior to raising taxes with respect to the delivery of inequality-reducing programs because mandatory CSR would likely prove to be a more efficient method compared to government-administered welfare. Evidence shows that about 70% of funds collected by the government goes to support the associated bureaucracy rather than to helping the poor, whereas the administrative costs incurred by private charities is typically less than 30%.<sup>46</sup> Moreover, this proposal is timely and necessary to bring the law in conformity with the expectations of consumers, business

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<sup>43</sup> The Companies Act, 2013, No. 18, Acts of Parliament, 2013.

<sup>44</sup> This proposal exempts businesses with annual turnover less than \$100 million.

<sup>45</sup> No less a capitalist than JP Morgan's Jamie Dimon said in an interview at the Aspen Institute:

[Inequality is] a moral issue and a significant concern for our company and the country. . . . There might be an Einstein or a Steve Jobs out there, and if we fail to give them a chance to realize their potential, it hurts our economy—and our society. . . . we would like to see more collaboration between government and business. We're all talking about improving income inequality and expanding opportunity, so let's focus on putting policies in place that get the job engine revving and the economy growing.

*Walter Isaacson Interviews Jamie Dimon on Income Inequality & Corporate Responsibility*, THE ASPEN INST. (May 19, 2014), <http://www.aspeninstitute.org/about/blog/walter-isaacson-interviews-jamie-dimon-on-income-inequality-and-corporate-responsibility>.

<sup>46</sup> John Rolph Edwards, *The Costs of Public Income Redistribution and Private Charity*, J. OF LIBERTARIAN STUD. 3, 4 (2007).

actors, and critically, the millennial generation, which has expressed overwhelming support for corporate social responsibility.

India offers a good basis for comparison and learning because it is the world's third largest economy in terms of purchasing power parity,<sup>47</sup> its corporate law is a transplant based on Anglo-American roots,<sup>48</sup> and it is the United States' eleventh largest trading partner for goods.<sup>49</sup>

Part I of this Article outlines the Indian judicial history, analyzing how courts have moved from a shareholder-centric policy to considering the interests of broader stakeholders. While the courts have certainly shifted, it is unclear whether this drive will continue. Part II analyzes the executive and legislative history of corporate social responsibility in India. Part III explores the Companies Act, 2013, focusing on the CSR provision and the accompanying provisions that indicate a shift towards a broader notion of corporate responsibility. Part IV provides an empirical analysis of the CSR provision's implementation by the top fifty companies listed on India's National Stock Exchange, showing that companies have embraced the mandate and exhibited a genuine interest in contributing to social development goals. Finally, Part V outlines our proposal for a mandatory CSR provision in the United States built upon the foundation of four macro developments—the rise of millennials, changing consumer expectations, the growth in sustainable investing, and the pursuit of esteem and reputation by corporations.

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<sup>47</sup> Dhara Ranasinghe, *China to Takeover U.S. Economy, India Trumps Japan*, CNBC (Apr. 30, 2014, 1:35 AM), <http://www.cnbc.com/id/101626562>.

<sup>48</sup> See Umakanth Varottil, *A Cautionary Tale of the Transplant Effect on Indian Corporate Governance*, 21 NAT'L L. SCH. OF INDIA REV. 1, 25 (2009); Afra Afsharipour, *Corporate Governance Convergence: Lessons from the Indian Experience*, 29 NW. J. INT'L L. & BUS. 335, 335 (2009).

<sup>49</sup> *India*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (May 9, 2014), <http://www.ustr.gov/countries-regions/south-central-asia/india>.

## I. THE JUDICIAL TRANSITION: FROM SHAREHOLDER CENTRICITY TO STAKEHOLDER CONSIDERATION

Indian corporate law's transition from shareholder centrality to a more encompassing view of stakeholder interests has been rocky. This Section examines this judicial transition from prior to the implementation of the Companies Act, 1956 through recent judicial decisions.

### *A. The Early Years*

Early Indian decisions, even predating the Companies Act, 1956, are clearly based on the principle that directors are merely agents of shareholders, and in some cases, creditors. For instance, in an 1885 decision of the Bombay High Court, Justice Scott, in deciding the extent of directors' liability for negligence, stated:

On the one hand the interests of shareholders and of creditors must be safeguarded against negligence and misconduct. On the other hand, the duties of directors must not be made so onerous as to cause every honest and prudent man [to] shrink from accepting such a post.<sup>50</sup>

Perhaps unsurprisingly for the time, Justice Scott wrote, "in the interests of the public, therefore, whether shareholders or creditors . . ."<sup>51</sup> indicating that the only constituencies to be considered in the context of the corporation were shareholders and creditors.

In another case, decided in 1924, the Allahabad High Court stated in the context of directors' remuneration, that the "directors are agents of the company, viz., all the shareholders who constitute the company, and therefore stand in the same position as agent to the

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<sup>50</sup> *New Fleming Spinning & Weaving Co. Ltd. v. Kessowji Naik & Ors*, (1885) I.L.R. 9 (Bom.) 373, at ¶14.

<sup>51</sup> *Id.*

principal.”<sup>52</sup> Again, the emphasis is on agency theory<sup>53</sup> with directors being considered the agents of shareholders.

This position continued after the adoption of the Companies Act, 1956. In *Albert Judah v. Rampada Gupta & Anr.*,<sup>54</sup> Justice P. Mallick cited a number of English cases stating that directors manage the affairs of the company for the benefit of the shareholders.<sup>55</sup>

This trend continued in most cases interpreting the 1956 Act, with a few exceptions. One such exception is *Harish Bansal et al. v. Moti Films (P) Ltd.*<sup>56</sup> There, the Delhi High Court—in the context of allowing persons apart from creditors and contributories to be heard in a winding up petition of a company—quoted a passage from a committee report concerning the Monopolies and Restrictive Trade Practices Act.<sup>57</sup> The Court highlighted the company’s importance to society:

In the development of corporate ethics, “we have reached a stage where the question of social responsibility of business to the community can no longer be scoffed at or taken lightly, . . . the companies can no longer be accepted as a private domain, the working of which would be of no concern to the society. On the contrary, the very impact of the corporate sector in terms of finance and employment shows that the well-being of the corporate sector is of considerable significance to the society....[It] has vital effect on the employment, and economy of the community and health of the society. In the

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<sup>52</sup> *Dikshit & Co. Ltd. v. Mathura Prasad*, A.I.R. 1925 (All.) 71, at ¶ 7.

<sup>53</sup> See Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

<sup>54</sup> A.I.R. 1959 (Cal.) 715.

<sup>55</sup> *Id.* at ¶ 35A.

<sup>56</sup> 25 (1984) D.L.T. 92.

<sup>57</sup> *Id.* at ¶ 16 (quoting RAJINDAR SACHAR, REP. OF THE HIGH-POWERED EXPERT COMM. ON COS. AND MRTP ACT, ch. 12 (1978)).

environment of modern economic development, corporate sector no longer functions in isolation.”<sup>58</sup>

The Court’s recognition of the social responsibility of companies is noteworthy even though the case was about a winding up petition and therefore obiter dicta.

The aberrant nature of *Harish Bansal* is highlighted by a 1986 ruling from the same court in which the court went to great lengths to explain that the role of the private sector was not to develop the economy.<sup>59</sup> Justice Anand distinguished the role and motivation assigned to the public and private sectors in the Indian economy, explaining that the private sector is concerned with “corporation gains” rather than “the larger national purpose of accelerated development.”<sup>60</sup> Justice Anand noted further that private sector operations are motivated by profit and, “in spite of all the exhortations, there is very little sign of the private sector either accepting any social responsibility or moderating its activities in larger public interest.”<sup>61</sup> On the other hand, the public must play a role in the core areas of the economy.<sup>62</sup>

In 1994, *T.S. Arumugham v. Lakshmi Vilas Bank Ltd.* took a small step away from stakeholder centricity.<sup>63</sup> The case involved employee representation on the board.<sup>64</sup> The petitioner contended that there had been an international shift in the understanding of a company from being property of shareholders to being regarded as a social organism with deep roots in the community.<sup>65</sup> The counsel referred to the debate between Adof Berle and Merrick Dodd in which

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<sup>58</sup> *Id.* (quoting RAJINDAR SACHAR, REP. OF THE HIGH-POWERED EXPERT COMM. ON COS. AND MRTTP ACT, ch. 12 (1978)).

<sup>59</sup> *Amarjit Singh v. Punjab National Bank & Others*, (1987) 61 Comp.Cas. 153 (Del.), at ¶16.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at ¶42.

<sup>62</sup> *Id.*

<sup>63</sup> (1994) 80 Comp.Cas. 814 (Mad.).

<sup>64</sup> *Id.* at ¶13.

<sup>65</sup> *Id.* at ¶21.

the former took the view that directors are agents of shareholders while the latter believed that directors are trustees of shareholders and the entire community.<sup>66</sup> Counsel noted how Berle later agreed with Dodd on modern directors running business enterprises.<sup>67</sup> The court indicated a willingness to adopt this view, stating, “counsel may be right . . . that the concept of the company has undergone a radical transformation and that there is considerable thinking on the concept of social responsibility of corporate management.”<sup>68</sup> However, the court left the issue to the government to legislate, and stated that until such legislation comes into force the existing law would apply.<sup>69</sup> Highlighting the 1956 Act’s focus on the shareholder, the Court held that once the shareholders had passed a resolution, the board had no say in the matter.<sup>70</sup>

But, subsequent cases further entrenched India’s focus on the shareholder. In *Shoe Specialty Ltd. et al. v. Tracstar Investment Ltd. et al.*, a 1996 breach of trust case dealing with fraudulent transfer of shares, the High Court of Madras cited a passage from Palmer’s Company Law stating that “although directors’ duties are owed primarily to, and are enforceable by the company and not to individual shareholders, the company is defined in equity usually by reference to the shareholders as a whole and not by reference to the company as an entity distinct from its members.”<sup>71</sup>

In *Rolta India Ltd. et al. v. Venire Industries Ltd. et al.*, a case about whether directors can contract out of their fiduciary duties, the court stated that directors should not only look to maximize the shareholders’ value in a takeover context, but also “make the

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at ¶23.

<sup>69</sup> *Id.* at ¶22-26.

<sup>70</sup> *Id.* at ¶26.

<sup>71</sup> (1997) 88 Comp.Cas. 471 (Mad.), at ¶33 (quoting PALMER’S CO. LAW, ch. 64 (23d ed. 1982)).

Corporation progressive.”<sup>72</sup> The court, however, did not explain what this concept entailed.<sup>73</sup>

The Supreme Court of India, in *Sangramsinh P. Gaekwad & Ors v. Shantadevi P. Gaekwad*,<sup>74</sup> stated that directors owe fiduciary duties to the company and not to individual shareholders.<sup>75</sup> There, as in *Rolta*,<sup>76</sup> change of control was the issue. Thus, the distinction between shareholders’ interests and the company’s interests seems to be carved out in change of control cases.

Judicial refusal to recognize that companies possess social responsibilities may not be surprising given the number of large public sector companies funded by the state. In *in re: Indian Petrochemicals Corporation Limited workers*, employee shareholders challenged a merger on the grounds that it went against public interest.<sup>77</sup> Its hidden purpose was to enable a private company, Reliance Industries, to have access to assets of a public company in a sector—certain sectors were classified as “strategic sectors” because of their importance for the national economy—forbidden to private companies.<sup>78</sup> The High Court of Gujarat, extending the language in *T.S. Arumugham*,<sup>79</sup> stated, “[u]nder the proposed scheme of amalgamation, Reliance Industries Limited will come to acquire a ‘strategic sector’ industry without any reciprocating social responsibility.”<sup>80</sup> The court held it was not sufficient to only consider the interests of the shareholders and employees but also those of society.<sup>81</sup> This decision indicates that the expectation of social responsibility in Indian corporate law, if indeed there was an

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<sup>72</sup> (2000) 100 Comp.Cas. 19 (Bom.), at ¶24.

<sup>73</sup> *Id.*

<sup>74</sup> A.I.R. 2005 S.C. 809.

<sup>75</sup> *Id.* at 16.

<sup>76</sup> *See* (2000) 100 Comp.Cas. 19 (Bom.), at ¶24.

<sup>77</sup> MANU/GJ/7533/2007.

<sup>78</sup> *Id.*

<sup>79</sup> (1994) 80 Comp.Cas. 814 (Mad.).

<sup>80</sup> MANU/GJ/7533/2007.

<sup>81</sup> *Id.*

expectation, only existed in the case of public sector companies; private sector companies were free to be profit-maximizing entities.

### *B. The Satyam Scam*

Indian corporate law continued in its stymied state until the system was jolted by the Satyam scam where the promoter directors of one of India's top software companies, Satyam Computers, confessed to falsifying the company's account books. The Company Law Board<sup>82</sup> heard a petition by the Indian Central Government seeking dismissal of the board and permission for the appointment of new directors in their place.<sup>83</sup> The CLB's judgment recognizes the deleterious consequences of corporate fraud not only for shareholders but also for other stakeholders. "[F]inancial impropriety and jugglery of financial statements, with the view to mislead the stakeholders, employees and the public in general. It appears that a serious fraud has been perpetrated on the society as a whole."<sup>84</sup> The tribunal noted that the way in which "the affairs of the company have been conducted has shaken the confidence of the public in the company as is evident from the fall in the share price of the company on 7-1-2009 from [rupees] 188 to 38.40."<sup>85</sup> Further, since the company was the fourth largest IT firm in India, with clients in over sixty countries, over 53,000 employees, and nearly three hundred thousand shareholders, the CLB stated, "their interests along with the interests of the company have to be protected."<sup>86</sup>

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<sup>82</sup> The Company Law Board is an independent quasi-judicial body in India that has powers to oversee the behavior of companies. See *Company Law Board, GOV'T OF INDIA CO. LAW BD., MINISTRY OF CORPORATE AFFAIRS*, <http://www.clb.nic.in/Oraganisation.htm> (last visited Feb. 22, 2014). The concept of Company Law Board in its present form was introduced through an amendment to the Companies Act of 1956 in 1988 via Section 10E. *Id.*

<sup>83</sup> *Union of India v. Satyam Computer Services Ltd. et al.*, (2009) 148 Comp.Cas. 252 (CLB), ¶1.

<sup>84</sup> *Id.* at ¶3.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

The magnitude of the scam generated an impetus for the protection of interests of constituencies other than shareholders, namely employees and consumers. The CLB added that “[t]he need of the hour is to create confidence in the minds of all those connected with the company in any capacity[.]”<sup>87</sup> Finally, in granting the relief sought by the government, the judge stated, “[t]herefore, I am fully convinced that in the interests of the members, employees, customers of the company and also in the larger public interest, the interim reliefs sought should be granted ex-parte.”<sup>88</sup> This underlined a new recognition of non-shareholder interests.

Similarly, a fraud case provided the Supreme Court with an opportunity to look at corporations and society at large. In *K.K. Baskaran v. State rep. by its Secretary, Tamil Nadu*—a case concerning the validity of legislation aimed at protecting depositors from financial companies indulging in Ponzi schemes—the apex court held,

The State being the custodian of the welfare of the citizens as *parens patriae* cannot be a silent spectator without finding a solution for this malady. The financial swindlers, who are nothing but cheats and charlatans having no social responsibility, but only a lust for easy money by making false promise of attractive returns for the gullible investors, had to be dealt with strongly.<sup>89</sup>

Thus the court seems to imply that many fraudulent financial activities are a consequence of companies having no social responsibility. However, the court again deferred to the legislature for legislation addressing these fraudulent activities rather than imposing a duty on companies to act in a socially responsible manner.

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> A.I.R. 2011 S.C. 1485, at ¶41.

### *C. Recent Judicial Recognition of Corporate Social Responsibility*

In addition to recognizing non-shareholder interests, the judiciary has been slowly moving towards explicitly recognizing the idea of corporate social responsibility. For instance, in *Commissioner of Income Tax v. Modi Industries Ltd.*—a case concerning the tax treatment of company buildings providing housing for low-income employees—the court noted the importance of considering employees’ interests: these interests are “now treated [as] an important facet and part of corporate social responsibility.”<sup>90</sup>

In *The Tata Power Company Ltd. (Transmission) v. Maharashtra Electricity Regulatory State Commission*,<sup>91</sup> another case in which the tax treatment of company expenses was at issue, the court held that the CSR expenditure was the responsibility of the company and that such expenses could not be passed on to consumers.<sup>92</sup>

Similar views were expressed in a case involving health care facilities.<sup>93</sup> The Delhi High Court posited,

[T]he Governments can and should attract donations to the healthcare sector, both in cash and kind. Both corporate social responsibility and donations need to be made particularly attractive for pharmaceutical and other companies involved in this sector, as the drugs, implants and devices required are often very expensive and inaccessible to the common man.<sup>94</sup>

However, the court did not shift the entire burden of health care services onto private actors; the court said that the government “needs to seriously consider expanding its health budget if [its] right to life and right to equality as enumerated in Articles 14 and 21, are not to be

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<sup>90</sup> (2010) 327 I.T.R. (570).

<sup>91</sup> MANU/ET/0150/2013.

<sup>92</sup> *Id.*

<sup>93</sup> Mohd. Ahmed (Minor) v. Union of India & Ors., W.P.(C) 7279/2013 (Del.).

<sup>94</sup> *Id.* at ¶70.

rendered illusory.”<sup>95</sup> The court suggested that government hospitals fall within the definition of a “CSR/charitable entity/account” wherein contributions can be received, and suggested that the Ministry for Company Affairs (MCA) provide “extra credit” for donations in the health sector.<sup>96</sup>

Returning to the particular relief sought in the case, the court concluded that because “the concept of CSR is still at a nascent stage and there is no mechanism in place which popularizes and facilitates donation, this Court is of the view that State must bear the burden of the treatment.”<sup>97</sup> It is apparent, from the treatment of the concept of CSR in this judgment that CSR is viewed as a donation or charity expected from companies in order to ensure that public services are accessible by all citizens.<sup>98</sup> This kind of interpretation makes it abundantly clear that the aim of the CSR expenditure is to encourage that companies spend in specified areas without a profit motive.

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<sup>95</sup> *Id.* at ¶80.

<sup>96</sup> *Id.* at ¶ 81.

<sup>97</sup> *Id.* at ¶82.

<sup>98</sup> In fact, while this case was being heard, notification of Schedule VII of the Act, which lists the categories under which companies could make their CSR expenditure, was issued. The court noted that two categories were dropped from the draft bill in the final version of the Act. The only category left in the area of health care was “preventive healthcare” and the court notes that this “would have closed the CSR funding route as an option to sponsor treatments for rare diseases.” *Id.* at ¶75. The court therefore directed the MCA to re-examine the matter. In response, the MCA amended Schedule VII of the Act to read as, “promoting health care including preventive health care” so as to “encompass the entire health care area, including the treatment of diseases, etc.” *Id.* at ¶76. Further, the MCA also filed an affidavit in this case and clarified that the term “normal course of business” as used in Rules 4 and 6 of the Companies (corporate social responsibility Policy) Rules, 2014, by giving the following example: “A pharmaceutical company donating medicines/drugs within section 135 read with Schedule VII to the Act is a CSR Activity, as the same is not an activity undertaken in pursuance of its normal course of business which is relatable to health care or any other entry in Schedule VII.” *Id.* at ¶77. Based on this affidavit by the MCA, the court stated, “an activity carried out by a Company covered under Schedule VII which is a part of its core business, if not done with a profit motive, amounts to a CSR Activity.” *Id.* at ¶78.

Further, the National Green Tribunal<sup>99</sup> recently embraced the language of the CSR provision and stakeholder-centric corporate governance in *Aam Janta v. State of Mp. Ors.*<sup>100</sup> Residents from five villages filed suit through their village leaders requesting a court to order Prism Cement Ltd., a public limited company with a cement plant, to stop polluting the area and improve sanitation.<sup>101</sup> The court, after considering the reports of the state pollution control board, ordered the company to “maintain a good relationship with all the stake holders particularly with the local villagers where the unit is located and where its mines are located for the common good and should demonstrate its commitment by way of undertaking various welfare measures.”<sup>102</sup> The court stated further that the company “should not just limit their activities for increasing their profits but strive to fulfil their corporate social responsibility on a continuous basis as long as the unit is under operation.”<sup>103</sup> It went on to say that the company “should integrate the economic, environmental and social objectives into...their working system and they cannot escape from their responsibility of maintaining clean environment and avoid causing inconvenience and damage to the villagers which affects their quality of life.”<sup>104</sup>

Even though the Court based this case on the Environment Protection Act, 1986,<sup>105</sup> the CSR language used is significant, indicating a trend towards recognizing the importance of a company’s social responsibilities. This is noteworthy, especially in light of criticism levelled against the CSR provision that supports a more

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<sup>99</sup> The National Green Tribunal was established under the National Green Tribunal Act, 2010 for expeditious handling of cases relating to environmental protection, conservation of forests, and other natural resources. See *National Green Tribunal (NGT)*, NAT’L GREEN TRIBUNAL, <http://www.greentribunal.gov.in/> (last visited Feb. 22, 2015). It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. *Id.*

<sup>100</sup> *Aam Janta v. State of Mp. Ors.*, C.S., No. 35 of 2013, N.G.T., 21 Feb. 2014.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

philanthropic approach compared to a broader stakeholder model.<sup>106</sup> Even though CSR and corporate philanthropy can blur together,<sup>107</sup> *Aam Janta* shows that courts can differentiate the two ideas and articulate CSR with a stakeholder-centric view.<sup>108</sup>

## II. THE LEGISLATIVE AND EXECUTIVE HISTORY: MOVEMENT TOWARDS CORPORATE SOCIAL RESPONSIBILITY

The Companies Act, 1956, enacted shortly after independence (1947), was the key corporate law statute in India for more than fifty years.<sup>109</sup> The Act was passed in an era that assumed a shareholder centrality, following the primacy shareholder model.<sup>110</sup> The Companies Act, 1956 provided the foundation for this shareholder model.<sup>111</sup> Designed for a non-free market economy, many legislators attempted overhauling the Companies Act previously, with no success.

### *A. First Steps Towards Social Responsibility*

The Securities and Exchange Board of India's (SEBI)<sup>112</sup> corporate governance reforms committees, even as late as 1999,

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<sup>106</sup> See, e.g., Afra Afsharipour & Shruti Rana, *The Emergence of New Corporate Social Responsibility Regimes in China and India*, 14 U.C. DAVIS BUS. L.J. 175, 223 (2014).

<sup>107</sup> *Corporate Social Responsibility in India: No Clear Definition, but Plenty of Debate*, KNOWLEDGE@WHARTON (Aug. 2, 2011),

<http://knowledge.wharton.upenn.edu/article/corporate-social-responsibility-in-india-no-clear-definition-but-plenty-of-debate/>.

<sup>108</sup> See *Aam Janta v. State of Mp. Ors.*, C.S., No. 35 of 2013, N.G.T., 21 Feb. 2014.

<sup>109</sup> The Companies Act, 1956, No. 1, Acts of Parliament, 1956.

<sup>110</sup> For a brief summary of the shareholder primacy versus stakeholder theory debate see Anant K. Sundaram & Andrew C. Inkpen, *The Corporate Objective Revisited*, 15 ORG. SCI. 3, 350-363 (2004).

<sup>111</sup> The Companies Act, 1956, No. 1, Acts of Parliament, 1956.

<sup>112</sup> The Securities and Exchange Board of India (SEBI) was established in 1992. See *About SEBI*, SEC. AND EXCH. BD. OF INDIA,

evidenced a shareholder-centric approach. For instance, the 1999 Kumar Mangalam Birla Committee on Corporate Governance Report stated that their recommendations would “ultimately serve the objective of maximiz[ing] shareholder value.”<sup>113</sup> Although this report acknowledged that corporate governance involved the interests of “all other stakeholders,” it went on to state that shareholders are the “raison de etre for corporate governance and also the prime constituency of SEBI.”<sup>114</sup> Even so, the report is significant because it is perhaps the first time in Indian corporate regulatory history that non-shareholder interests are even acknowledged.<sup>115</sup> Eventually, the Birla Committee’s recommendations were crystallized in Clause 49 of the Listing Agreement in 2000.<sup>116</sup>

In 2003, the Report of the SEBI Committee on Corporate Governance underlined the focus on shareholder primacy in its preamble where it defined corporate governance as “the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders.”<sup>117</sup> This report focused on financial disclosures

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[http://www.sebi.gov.in/sebiweb/stpages/about\\_sebi.jsp](http://www.sebi.gov.in/sebiweb/stpages/about_sebi.jsp) (last visited Feb. 21, 2015). Its powers are derived from the Securities and Exchange Board of India Act, 1992. *Id.*

<sup>113</sup> Kumar Mangalam Birla, Report of the Kumar Mangalam Birla Committee on Corporate Governance, ¶1.8 (1999), *available at* <http://www.sebi.gov.in/commreport/corpgov.html>.

<sup>114</sup> *Id.* at ¶1.5.

<sup>115</sup> N. Balasubramanian, *Strengthening Corporate Governance in India: A Review of Legislative and Regulatory Initiatives in 2013-2014*, 10 (Indian Institute of Management Bangalore, Working Paper No. 447, 2014) *available at* [http://www.iimb.ernet.in/research/sites/default/files/WP%20No.%20447%20\(Revised\)\\_0.pdf](http://www.iimb.ernet.in/research/sites/default/files/WP%20No.%20447%20(Revised)_0.pdf).

<sup>116</sup> Circular from Parag Basu, Deputy General Manager, Corporation Finance Department, to the Managing Director/Executive Director/Administrators of All the Stock Exchanges, Corporate Governance in Listed Companies-Clause 49 of the Listing Agreement (Oct. 29, 2004), *available at* <http://www.sebi.gov.in/circulars/2004/cfdcir0104.pdf>.

<sup>117</sup> COMM. ON CORPORATE GOVERNANCE, SEBI, REP. OF THE SEBI COMM. ON CORPORATE GOVERNANCE, Preamble (2003), *available at* <http://www.sebi.gov.in/commreport/corpgov.pdf>.

including related party transactions, disclosures relating to compensation paid to non-executive directors, and proceeds from initial public offerings.<sup>118</sup> The committee's recommendations resulted in amendments to Clause 49 in 2004.<sup>119</sup>

After failed attempts<sup>120</sup> to revamp the Companies Act to include CSR requirements, in 2004, the government drafted a comprehensive concept paper.<sup>121</sup> This draft aimed to consolidate and modernize company law in order to meet the needs of a country that had transitioned from a socialist economy to a hybrid free-market economy.<sup>122</sup> The Indian government also formed the Expert Committee on Company Law, chaired by Doctor J.J. Irani.<sup>123</sup>

A transition to a more expansive view of stakeholders was furthered with the 2005 Expert Committee on Company Law Report.<sup>124</sup> It marked the next step in a slow evolution towards considering non-shareholders interests.<sup>125</sup> The Report considered the interests of non-shareholder constituencies noting, "the framework for regulation . . . has to . . . enable protection of the interests of the investors and other stakeholders."<sup>126</sup> Further, the Report emphasizes a framework that "ensures credibility of corporate operations in the minds of the stakeholders."<sup>127</sup> Emphasizing the importance of disclosures, the Report states, "[t]he best enabling environment for compliance with law is the presence of an informed and vigilant group of stakeholders."<sup>128</sup> Further, the Report outlines a hierarchy of

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<sup>118</sup> *Id.*

<sup>119</sup> Circular from Parag Basu, *supra* note 116.

<sup>120</sup> MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA, CONCEPT PAPER—NOTE ON THE APPROACH (2004), *available at* <http://www.mca.gov.in/Ministry/pdf/conceptpaper.pdf>.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *See* EXPERT COMM. ON CO. LAW, REP. ON CO. LAW (2005), *available at* <http://www.acga-asia.org/public/files/JJ%20Irani%20Report.pdf>.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at ch. 1, ¶5.

<sup>127</sup> *Id.* at ch. 8, ¶2.

<sup>128</sup> *Id.* at ch. 12, ¶2.

penalties making the penalty commensurate with the offense. Under this order, actions that deprive shareholders of their rights need to be “treated seriously,” whereas “violations of a procedural nature that do not irretrievably damage stakeholders rights need to be treated differently.”<sup>129</sup>

Interestingly, although the report takes non-shareholder interests into account, it is only a deprivation of shareholder rights that attracts “serious” penalties. Therefore, it is probably no coincidence that the CSR provision ultimately included in the Companies Act, 2013 provides a penalty for non-disclosure of CSR information in the board’s report but omits any penalty for not complying with the CSR spend requirement itself. Ultimately, this Report served as a basis for much of the Companies Act, 2013.

### *B. Voluntary Guidelines on CSR, 2009*

Just a few years after the Expert Committee on Company Law’s Report, the MCA issued the Corporate Social Responsibility Voluntary Guidelines 2009.<sup>130</sup> The Guidelines foreword, written by Salman Khurshid, the Minister of State for Corporate Affairs, highlights the widening wealth gap in the country by contrasting the growth of business against the problems of “poverty, unemployment, illiteracy, and malnutrition, etc.”<sup>131</sup> Khurshid implored businesses to “take the responsibility of exhibiting socially responsible business practices that ensures the distribution of wealth and well-being of the communities in which the business operates.”<sup>132</sup>

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<sup>129</sup> *Id.* at ch. 12, ¶3.

<sup>130</sup> MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA, CORPORATE SOCIAL RESPONSIBILITY VOLUNTARY GUIDELINES (2009) *available at* [http://www.mca.gov.in/Ministry/latestnews/CSR\\_Voluntary\\_Guidelines\\_24dec2009.pdf](http://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf).

<sup>131</sup> *Id.* at 5.

<sup>132</sup> *Id.* Khurshid acknowledges the competing interests of companies stating, “[t]hese guidelines will also enable business to focus as well as contribute towards the interests of the stakeholders and the society.” *Id.* at 6.

However, the Guidelines clarify that the CSR contemplated is not philanthropy.<sup>133</sup> The 2009 Guidelines adopt a more holistic approach to CSR compared to what was eventually adopted in the Companies Act, 2013. While the Act focuses exclusively on CSR expenditure in the specified activities, the Guidelines focus both on CSR activities and on the ethical and sustainable conduct of businesses.<sup>134</sup> The Guidelines also outline the rights of all stakeholders and human rights, more generally.<sup>135</sup> The Guidelines encourage CSR initiatives to be an integral part of the overall business policy, aligned with the business goals.<sup>136</sup>

*C. Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business, 2011*

Two years after the issuance of the voluntary CSR guidelines, the MCA produced the National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business.<sup>137</sup> The principles enshrined in these guidelines are: (1) “Businesses should conduct and govern themselves with ethics, transparency and accountability;” (2) “Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle;” (3) “Businesses should promote the wellbeing of all employees;” (4) “Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalised;” (5) “Businesses should

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<sup>133</sup> *Id.* at 10.

<sup>134</sup> *Id.* at 11-12.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 11-13.

<sup>137</sup> Press Release, Press Information Bureau, Government of India, National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business Released (July 8, 2011, 4:53 PM) (on file with author); *see* MINISTRY OF CORPORATE AFFAIRS, GOV'T OF INDIA, NAT'L VOLUNTARY GUIDELINES ON SOCIAL, ENVTL & ECON. RESPONSIBILITIES OF BUS. (2011) *available at* [http://www.mca.gov.in/Ministry/latestnews/National\\_Voluntary\\_Guidelines\\_2011\\_12jul2011.pdf](http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf).

respect and promote human rights;” (6) “Businesses should respect, protect, and make efforts to restore the environment;” (7) “Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner;” (8) “Businesses should support inclusive growth and equitable development;” and (9) “Businesses should engage with and provide value to their customers and consumers in a responsible manner.”<sup>138</sup> These guidelines contain a business responsibility reporting format and require companies to make disclosures regarding steps taken to implement these principles.<sup>139</sup> Interestingly, although these guidelines have been justified as a means to promote inclusive development of the country,<sup>140</sup> Annexure A to the Guidelines provides a “Business Case” for the benefits to following the Guidelines.<sup>141</sup> The Business Case proffers benefits that extend further beyond social responsibility,<sup>142</sup> indicating that socially responsibility benefits a company’s bottom line as well.

#### *D. SEBI Circular on Business Responsibility Reports, 2012*

SEBI, in line with the MCA’s National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business, 2011, amended its listing agreement in 2011 by introducing Clause 55.<sup>143</sup> The Clause requires the top 100 listed entities to include business responsibility reports along with their annual reports.<sup>144</sup> Noting that enterprises are increasingly being seen as part of the social system, the SEBI General Manager, Sunil Kadam, stated that because the listed companies “have accessed funds from the public,

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<sup>138</sup> See MINISTRY OF CORPORATE AFFAIRS, GOV’T OF INDIA, *supra* note 137, at 7-26.

<sup>139</sup> *Id.* at 34-39.

<sup>140</sup> *Id.* at 2.

<sup>141</sup> *Id.* at 40-41.

<sup>142</sup> *Id.*

<sup>143</sup> Circular from the Sunil Kadam, General Manager, Securities and Exchange Board of India, to All Stock Exchanges (Aug. 13, 2012), *available at* [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1344915990072.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1344915990072.pdf).

<sup>144</sup> *Id.*

[they] have an element of public interest involved and are obligated to make exhaustive continuous disclosures on a regular basis.”<sup>145</sup> Amongst other things, Clause 55 of the listing agreement requires companies to report the total amount that they spend on CSR as a percentage of the profits after tax of each year and its list of CSR activities.<sup>146</sup>

SEBI recognized that many of the top 100 listed companies in India are also cross-listed on exchanges in other countries and have to fulfil the listing requirement of those stock exchanges.<sup>147</sup> Therefore the amendment exempted companies submitting sustainability reports to overseas regulatory agencies or stakeholders from this requirement.<sup>148</sup> It is sufficient for such companies to make the sustainability report available to their stakeholders as long as the details required by the business responsibility report are covered.<sup>149</sup>

### *E. Passage of the Companies Act, 2013*

The debate over the CSR provision was heated leading up to the passage of the Companies Act, 2013. The MCA initially added a CSR provision to the Act because of pressure from the Standing Committee of Finance.<sup>150</sup> Reflecting the controversial aspect of the provision, the then-secretary to the government at the MCA acknowledged that it could be argued whether the “government should mandate anything” but that the MCA had taken a “considered

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> MINISTRY OF CORPORATE AFFAIRS, STANDING COMM. ON FIN., THE COMPANIES BILL, 2009, TWENTY-FIRST REP. 9.43 (2009-2010), *available at* [http://www.nfcindia.org/pdf/21\\_Report\\_Companies\\_Bill-2009.pdf](http://www.nfcindia.org/pdf/21_Report_Companies_Bill-2009.pdf) (“There was no mention in the earlier Companies Act about corporate social responsibility. We are just mentioning that there will be a Corporate Social Responsibility Policy in each and every company beyond a certain limit, which are profitable companies and which are of certain size.”).

view” in introducing the provision.<sup>151</sup> Upon questioning by the chairman of the Standing Committee about monitoring of CSR, the secretary replied, “the whole emphasis of the Act is disclosure method.”<sup>152</sup>

The CSR provision underwent changes in later drafts in order to enhance the mandatory nature of the obligation. Notably, the 2009 draft merely required the board to “*make every endeavour* to ensure” that the required amount of CSR expenditure is made.<sup>153</sup> This was amended in the 2011 version of the bill to “the board *shall* ensure,” thus making it a mandatory board obligation.<sup>154</sup> In the debate of the bill in the lower house of Parliament, the Minister of State for Corporate Affairs, Shri Sachin Pilot, justified the provision as “clearing the air” and correcting the “divide between the rich and poor [which] is getting bigger and bigger.”<sup>155</sup> The minister claimed this could “only be done if the companies themselves move forward and show that they are responsible, sensitive and they want to give back to the society.”<sup>156</sup>

Finally, after a torturous process, reformers succeeded in passing legislation through Parliament in 2013.<sup>157</sup> Despite competing pressures, the MCA did not capitulate. The mandatory CSR requirement contained in section 135 survived in the final version of the Companies Act, 2013.<sup>158</sup>

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 9.44.

<sup>153</sup> MINISTRY OF CORPORATE AFFAIRS, STANDING COMM. ON FIN., COMPANIES BILL, 2011, FIFTY-SEVENTH REP. 99 (2011-2012) (emphasis added).

<sup>154</sup> *Id.* (emphasis added).

<sup>155</sup> *Discussion on the Motion for Consideration of the Companies Bill, 2011: Lok Sabha Debates on Companies Bill, 2011* (India 2012), available at <http://164.100.47.132/LssNew/psearch/Result15.aspx?dbsl=8914>.

<sup>156</sup> *Id.*

<sup>157</sup> The Companies Act, 2013, No. 18, Acts of Parliament, 2013.

<sup>158</sup> *Id.* at § 135(5) (“The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy”).

As adopted, section 135 of the Companies Act 2013 is applicable to companies that have a net worth of at least rupees 500 crore (approximately eighty million dollars) or those that have an annual turnover of at least rupees 1,000 crore (approximately eight hundred thousand dollars).<sup>159</sup> The provision mandates companies to annually spend at least two percent of its average net profits in the preceding three financial years on CSR activities.<sup>160</sup>

### III. THE COMPANIES ACT, 2013: MANDATING CORPORATE SOCIAL RESPONSIBILITY

As Part II demonstrates, prior to the passage of the Companies Act, 2013, CSR reporting was not a completely novel idea, at least for listed companies.<sup>161</sup> Instead of advancing the CSR cause, it might be argued that the Act narrowed the ambit of CSR in India. For instance, under the statutory definition, CSR activities do not include activities undertaken in pursuance of the normal course of business of the company.<sup>162</sup>

Although the scope of CSR in the Act is limited to mean spending a fixed percentage of company profits on CSR activities (versus the more expansive voluntary Guidelines discussed above), the government's rationale for the CSR provision still echoes that of the voluntary Guidelines. The Standing Committee, in its review of the 2011 Bill stated,

[Corporations] owe it to the people and the society to pay them back in terms of social services and by building social capital for common good. This cannot be the sole responsibility of governments.<sup>163</sup>

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<sup>159</sup> *Id.* at § 135(1).

<sup>160</sup> *Id.* at § 135(5).

<sup>161</sup> *See* Part II.

<sup>162</sup> 95 G.S.R. § 129(E)(6) (2014), *available at*

[http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf).

<sup>163</sup> MINISTRY OF CORPORATE AFFAIRS, *supra* note 153, at 106.

### *A. The Procedural Requirements*

Boards of companies covered by section 135 must constitute a CSR committee consisting of at least one independent director.<sup>164</sup> This committee is required to frame the company's CSR policy outlining the CSR activities to be undertaken and the amount it must spend on these activities. The committee must then recommend this policy to the board.<sup>165</sup> Once the board approves it, the policy must be disclosed in the annual board report and also displayed on the company website, if the company has one.<sup>166</sup> The board is then responsible for ensuring that the required amount is spent on the activities outlined in the policy.<sup>167</sup> Further, in implementing the CSR activities, the company's local area the surrounding areas should be given priority.<sup>168</sup> The CSR committee is charged with regularly monitoring the CSR policy of the company.<sup>169</sup>

### *B. Scope of Activities Covered*

The Act specifies broad activities companies can include in their CSR policies.<sup>170</sup> Although the Act is worded in a manner that

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<sup>164</sup> The Companies Act, 2013, No. 18, § 135(1), Acts of Parliament, 2013.

<sup>165</sup> *Id.* § 135(3).

<sup>166</sup> *Id.* § 135(4).

<sup>167</sup> *Id.* § 135(5).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* § 135(3)(c).

<sup>170</sup> *Id.* at Schedule VII. These activities include:

- (i) eradicating extreme hunger and poverty; (ii) promotion of education; (iii) promoting gender equality and empowering women; (iv) reducing child mortality and improving maternal health; (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; (vi) ensuring environmental sustainability; (vii) employment enhancing vocational skills; (viii) social business projects; (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and

indicates an illustrative list, the accompanying Rules<sup>171</sup> state that the CSR expenditure does not include expenditure on activities outside of those specified under the Act.<sup>172</sup> However, responding to stakeholder representations, the MCA issued June 2014 Circular.<sup>173</sup> This Circular indicates that the items under Schedule VII should be “interpreted liberally.”<sup>174</sup> Crucially, the Circular explains that the items in Schedule VII are “broad-based and are intended to cover a wide range of activities.”<sup>175</sup> The Annexure to the Circular contains a list of additional items requested by various stakeholders to be included under Schedule VII and the MCA’s response to whether the said item could be interpreted under one of the heads under Schedule VII.<sup>176</sup> For instance, the MCA clarified that “consumer protection services” are eligible under CSR, specifying that (ii) “promoting education” of Section VII could be broadly interpreted to include consumer education and awareness.<sup>177</sup> The MCA also explained that “trauma care around highways in case of road accidents” would be considered CSR under “healthcare.”<sup>178</sup>

However, CSR programs are limited in some ways. For instance the MCA denied the “U.S.-India Physicians Exchange Program” as

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funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and (x) such other matters as may be prescribed.

<sup>171</sup> 95 G.S.R. § 129(E) (2014), *available at*

[http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf).

<sup>172</sup> *Id.* at § 129(E)(7).

<sup>173</sup> Circular from Seema Rath, Assistant Director (CSR), to All Regional Director, All Registrar of Companies, All Stakeholders, Clarifications with Regard to Provisions of Corporate Social Responsibility Under Section 135 of the Companies Act, 2013 (June 18, 2014), *available at*

[http://forbesindia.com/blog/wp-content/uploads/2014/06/General\\_Circular\\_21\\_2014.pdf](http://forbesindia.com/blog/wp-content/uploads/2014/06/General_Circular_21_2014.pdf).

<sup>174</sup> *Id.* at 1.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at Annexure.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

under the CSR ambit.<sup>179</sup> These clarifications can therefore be used as illustrative guidelines for companies in deciding whether a particular activity would be recognized as CSR under the Act.

This list of activities is further qualified by the Rules which state that only activities undertaken in India will be given credit under the Act and that activities benefiting only employees of the company and their families will not be regarded as CSR activities.<sup>180</sup> CSR will not include activities undertaken in the normal course of a company's business.<sup>181</sup> In addition to these qualifications, the CSR committee of the board is required to prioritize CSR spending in the local area and areas around the zone of operation of the company over others.<sup>182</sup> The June 2014 Circular further provides that expenses incurred in the course of complying with any legislation in place will not count as CSR expenditure.<sup>183</sup> Clearly, in the MCA's view, CSR transcends mere compliance with applicable legislation like labor laws or environmental statutes and entails a degree of voluntariness in the activity as distinct from legal obligation.

Further, the June 2014 Circular clarifies that the salaries paid by the company to staff in charge of CSR, whether they are regular staff or volunteers, can be factored into the CSR expenditure of the company.<sup>184</sup> If a foreign holding company of an Indian subsidiary incurs expenditure on CSR activities in India, that expenditure can be factored under the CSR spend of the Indian subsidiary as long as it is routed through the Indian subsidiary.<sup>185</sup>

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<sup>179</sup> *Id.*

<sup>180</sup> 95 G.S.R. § 129(E)(4)(5) (2014), available at [http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf).

<sup>181</sup> § 129(E)(6)(1).

<sup>182</sup> The Companies Act, 2013, No. 18, § 135(5), Acts of Parliament, 2013.

<sup>183</sup> Circular from Seema Rath, *supra* note 173, at 2.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

### *C. Reporting*

The Act imposes an obligation on each company board to submit a report, along with the financial statements, to the company in the general meeting.<sup>186</sup> This report must include the annual report on CSR activities.<sup>187</sup> The CEO (or managing director or a director), the chairman of the CSR committee, and in case of foreign companies, the authorized person to accept court notices have to sign the report.<sup>188</sup> The section adopts a “comply or explain” model of CSR. In the event that the company has failed to spend the required amount on CSR activities in a year, the board must explain the reasons for not doing so.<sup>189</sup>

The Rules contain an Annexure stipulating the format for the annual report on CSR activities to be included in the board’s report. Companies are required to provide an outline of their CSR policy including an overview of the projects or programs to be undertaken and a web-link to the company website where the CSR policy and programs are outlined in detail.<sup>190</sup> The report must also include the composition of the CSR committee, the average net profit of the company for the last three financial years, the prescribed CSR expenditure, and the details of CSR spending during the financial year (including the amount spent, and the amount allocated but not spent).<sup>191</sup> The manner in which the amount was spent during the financial year is to be detailed under the following seven heads: (1) the CSR project or activity; (2) the sector (under Schedule VII of the Act) in which the project is covered; (3) the local area or, in any other case, the particular area in which the activity was carried out including the particular state and district; (4) the amount allocated for the project itself or for each program within the project; (5) the

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<sup>186</sup> The Companies Act, 2013, No. 18, § 134(3), Acts of Parliament, 2013.

<sup>187</sup> *Id.* at § 134(3)(o).

<sup>188</sup> 95 G.S.R. § 129(E) Annexure (2014), *available at*

[http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf).

<sup>189</sup> The Companies Act, 2013, No. 18, § 135(5), Acts of Parliament, 2013.

<sup>190</sup> 95 G.S.R. § 129(E) Annexure.

<sup>191</sup> *Id.*

amount actually spent on the project or programs, including a breakdown between direct expenditure on the program and overhead; (6) the cumulative expenditure up to the reporting period; and finally, (7) the total amount spent along with details of whether this was directly spent or spent through an implementing agency.<sup>192</sup> In addition, the CSR committee must attach a responsibility statement that the implementation and monitoring of the CSR policy is in compliance with the CSR objectives and policy of the company.<sup>193</sup>

#### *D. Penalties*

Although the CSR provision in the Act has been referred to as a “mandatory” provision, the Act does not specify a penalty for companies that do not comply with the CSR spending requirement. However, failure on the part of the board to report on CSR activities would make the company liable to a penalty in the form of a fine ranging from “fifty thousand rupees but which may extend to twenty-five lakh rupees.”<sup>194</sup> Further, every officer in default would be punishable with imprisonment up to three years, a fine, or both.<sup>195</sup>

Thus, although the Act does not explicitly provide for a penalty for not spending the required amount on CSR activities, the articulation of CSR as a board function implies that non-compliance with the provision ought to trigger the penalties stipulated for breach of directors’ duties. Moreover, it is arguable that the general penalty clause in the Act, which operates as the default clause for sections that do not specify any penalty, might be invoked against companies that do not fulfil the CSR requirements.<sup>196</sup>

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<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> The Companies Act, 2013, No. 18, § 134(8), Acts of Parliament, 2013.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at § 450.

### *E. The Act's Stakeholder Centric Provisions*

In addition to the CSR provision, there are a number of stakeholder centric provisions. Critics of the CSR provision see it as government-mandated philanthropy, but it is just one of the numerous Act provisions shifting towards a stakeholder oriented view of the corporation. This section examines these provisions, their effectiveness, and the possible avenues of enforcement.

#### 1. Directors' Duties, Liabilities, and Possible Safe Harbors

Section 166 of the Act outlines the duties of directors.<sup>197</sup> It codifies the hitherto accepted common law duties of acting in good faith and exercising due and reasonable care skill and judgement.<sup>198</sup> Clause 2 further expands the duties of directors, stating:

A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.<sup>199</sup>

The notion that directors have to act in the best interests of the company is now stretched to include the interests of employees, shareholders, the community, and the environment. Interestingly, section 166 as a whole was also introduced—like the CSR provision—during the review of the Companies Bill 2009.<sup>200</sup> The duty of directors towards shareholders, employees, community and environment was incorporated specifically based on a suggestion by

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<sup>197</sup> The Companies Act, 2013, No. 18, § 166 Acts of Parliament, 2013.

<sup>198</sup> *Id.* at § 166(1), (3).

<sup>199</sup> *Id.* at § 166(2).

<sup>200</sup> MINISTRY OF CORPORATE AFFAIRS, *supra* note 86, at 11.75.

the Institute of Company Secretaries of India (ICSI).<sup>201</sup> The MCA, in incorporating this suggestion, noted that these changes were in line with the CSR provision.<sup>202</sup> While this piece of legislative history makes it clear that the CSR provision is not just an irregularity in an otherwise shareholder centric legislation, there is no guidance on the enforcement of this provision. If directors are expected to act in the best interests of the company, its employees, the shareholders, the community, and for the protection of the environment, it is inevitable for conflicting interests will arise.

Section 166 also provides a penalty clause. Any director contravening any of the clauses in § 166, including subsection 2, will be punished with a fine in the range of rupees one lakh (\$1,636) to rupees five lakh (\$8,100).<sup>203</sup> The practical application of the penalty clause may resolve conflicting interests, but it remains given that the government has not yet provided guidance.

Courts might derive clarity from the amendments to Clause 49 of the listing agreement. There, a higher priority is placed shareholders' interests compared to stakeholders interests. Given this history, courts might fall back on the familiar notion of shareholder primacy.

Directors may look to safe harbors to mitigate any possible liabilities. Section 463 of the Act grants the court the power to provide relief to officers of the company, including directors,<sup>204</sup> in certain proceedings if it appears that the director in question may be liable "but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected

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<sup>201</sup> The standing committee of finance heard the views of representatives of various concerned organizations including the Federation of Indian Chamber of Commerce and Industries (FICCI), the Confederation of Indian Industries (CII), the Institute of Chartered Accountants of India (ICAI), the Institute of Company Secretaries of India (ICSI), the Institute of Cost and Works Accountants of India (ICWAI), the Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI). *Id.* at Introduction, cl. 4.

<sup>202</sup> *Id.* at 11.80.

<sup>203</sup> The Companies Act, 2013, No. 18, § 166(7) Acts of Parliament, 2013.

<sup>204</sup> *Id.* at § 463(1).

with his appointment, he ought fairly to be excused.”<sup>205</sup> This power applies to proceedings for negligence, default, breach of duty, misfeasance, or breach of trust.<sup>206</sup> A similar provision was included in the 1956 Act.<sup>207</sup> But, given that this provision is discretionary, directors are not fully protected.<sup>208</sup>

Prudent directors might look towards indemnity clauses in their employment contracts to protect them from liability. Perhaps anticipating this development, the statutory provision invalidating contracts or provisions in the company’s articles of association that indemnify directors’ liability has been deleted from the Act, opening the door to enforceability of directors’ indemnity clauses in employment agreements.<sup>209</sup>

The amendments to Clause 49 might have unwittingly created a safe harbor for directors when there is a record of their dissent with respect to decisions that might seem risky. Clause 49 now requires the company to maintain minutes of board meetings, “explicitly recording dissenting opinions, if any.”<sup>210</sup> This might lead directors to speak out in dissent with respect to any decisions that might seem even slightly risky or prone to potential lawsuits in order to ensure they avoid liability. While it is good to disincentivize contraventions of the law, completely disincentivizing risky business decisions may also hurt the business.

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<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> The Companies Act, 1956, No. 1, § 633, Acts of Parliament, 1956.

<sup>208</sup> The Companies Act, 2013, No. 18, § 463(2), Acts of Parliament, 2013.

<sup>209</sup> *See id.* at § 201. For a discussion on mitigating factors, see Umakanth Varottil, *Directors’ Duties and Liabilities in the New Era*, NSE QUARTERLY BRIEFING, April, 5, 2014, at 5, available at [http://www.nse-india.com/research/content/res\\_QB5.pdf](http://www.nse-india.com/research/content/res_QB5.pdf).

<sup>210</sup> *Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2014*, SECURITIES AND EXCHANGE BOARD OF INDIA, available at [http://www.sebi.gov.in/cms/sebi\\_data/commondocs/annex1approach\\_p.pdf](http://www.sebi.gov.in/cms/sebi_data/commondocs/annex1approach_p.pdf) (last visited Feb. 22, 2014).

## 2. Stakeholder Relationship Committee

Perhaps the clearest signal towards stakeholder orientation is the stakeholder relationship committee requirement. The Act requires companies with over one thousand shareholders, debenture-holders, deposit-holders and any other security holders to institute a stakeholder relationship committee.<sup>211</sup> While it is up to the board to choose the members of this committee, the Act requires that the chairperson must be a non-executive director.<sup>212</sup> This committee is limited to resolving the grievances of security holders in the company.<sup>213</sup> Even though this committee has limited powers, its creation indicates the important step towards stakeholder centricity.

## 3. Code for Independent Directors

Two provisions in the code for independent directors require independent directors to “safeguard the interest of stakeholders, particularly the minority shareholders”<sup>214</sup> and “balance the conflicting interests of the stakeholders.”<sup>215</sup> The terms “stakeholder” and “shareholder” seem to be used almost interchangeably. Even if a broader definition of the term “stakeholder” is implied, the interests of minority shareholders appear to be prioritized. This confusion surrounding the usage of the term “stakeholder” is compounded by the fact that the term is not defined in the definition clause of the Act.<sup>216</sup>

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<sup>211</sup> The Companies Act, 2013, No. 18, § 178(5), Acts of Parliament, 2013.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* at § 178(6).

<sup>214</sup> *Id.* at Schedule IV, Part II(5).

<sup>215</sup> *Id.* at Schedule IV, Part II(6).

<sup>216</sup> *See id.* §2.

#### 4. Class Actions

The class action provision is another recent addition company law in India. Section 245 of the Act allows a prescribed number<sup>217</sup> of shareholders and/or depositors of a company to file an application in a Tribunal in situations where the affairs of the company are being conducted in a manner that is “prejudicial to the interests of the company or its members or depositors.”<sup>218</sup> Although the interests of members and depositors are explicitly mentioned, other interests could arguably be read under the phrase “interests of the company.”

However, a review of the legislative history for this provision suggests that this is unlikely. The purpose of this provision seems to be the protection of small investors.<sup>219</sup> The class action suit was suggested as a mechanism for small investors to have easy access to immediate relief.<sup>220</sup> As this is the intent of the provision, it is unlikely that cases regarding the CSR expenditure mandate would be successful.

#### 5. General Penalty Clause

Like the 1956 Act, the 2013 Act provides for a general or default penalty clause that may apply when provisions of the Act are contravened and no penalty or punishment is provided anywhere else.<sup>221</sup> Because the provision concerning CSR does not specify a penalty for non-compliance, the application of this general penalty could be used. Section 629A of the 1956 Act is in essence the same as Section 450 in the new Act.<sup>222</sup> Thus, judicial decisions dealing with

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<sup>217</sup> *Id.* at § 245(2). Section 245 sets the threshold at one hundred shareholders or a percentage of the shareholders, which will be specified, whichever is less (for a company limited by shares) and one fifth of the total number of members (for companies not having shares). *Id.*

<sup>218</sup> *Id.* at § 245(1).

<sup>219</sup> MINISTRY OF CORPORATE AFFAIRS, *supra* note 86, at Clause 47.

<sup>220</sup> *Id.*

<sup>221</sup> The Companies Act, 2013, No. 18, §450, Acts of Parliament, 2013.

<sup>222</sup> Only the quantum of punishment in terms of fine and imprisonment has changed from the provision in the 1956 Act to the 2013 Act. The first parts of both

the applicability of section 629A of the 1956 Act might provide guidance in understanding the applicability of section 450 in the 2013 Act.

The Supreme Court of India, relying upon a previous decision,<sup>223</sup> ruled that even though a provision in the 1956 Act did not set out a penalty, the provision was still mandatory.<sup>224</sup> The court held that it was a question of construction “whether the legislature intended to prohibit the doing of the act altogether, or merely to make the person who did it liable to pay the penalty.”<sup>225</sup> Further, in applying section 629A to another section of the 1956 Act, the court held that the section was mandatory even though the Act did not specify a

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sections are essentially the same with only a few words rearranged. The relevant part of the 1956 Act, section 629A, reads,

If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted. . . .”

The Companies Act, 1956, No. 18, §629A Acts of Parliament, 1956. The relevant part of the 2013 Act, section 450, reads,

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act...”

The Companies Act, 2013, No. 18, §450, Acts of Parliament, 2013.

<sup>223</sup> See *Mannalal Khetan v. Kedar Nath Khetan* (1977) 2 S.C.C. 424 (India).

<sup>224</sup> *Union of India v. A.K. Pandey*, (2009) 10 S.C.C. 552, para. 25.

<sup>225</sup> *Id.* at para. 21 (citing *Mannalal Khetan v. Kedar Nath Khetan* (1977) 2 S.C.C. 424 (India)).

penalty because of the “negative, prohibitory and exclusive” words used.<sup>226</sup>

The CSR provision of the 2013 Act is not prohibitive in nature. Instead, the language of the section is framed in positive terms like “the board shall” and “the corporate social responsibility committee shall.”<sup>227</sup> While the purpose of the provision seems to be a push to ensure that companies contribute to national development, the legislative history also indicates that the drafters of Act only required disclosure deliberately.<sup>228</sup>

Finally, most other provisions of the 2013 Act, as noted in the discussion above, are explicitly geared towards protecting the interests of shareholders and other security holders, to a lesser extent. Although the provision on directors’ duties, § 166(2),<sup>229</sup> does use the same language of the CSR provision it is unclear whether this would be applied. The result is a lack of clarity regarding whether CSR is truly mandatory.

## 6. National Company Law Tribunal

Like so many legal systems, the Indian judicial system is characterized by an inordinate number of delays.<sup>230</sup> These delays may deter those who would otherwise bring shareholder suits.<sup>231</sup> Under the 1956 Act, the Company Law Board (CLB) served as the primary judicial authority for the enforcement of company law.<sup>232</sup> Decisions from the CLB could be appealed to the high courts and supreme courts.<sup>233</sup> In practice, there were significant delays at the CLB and

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<sup>226</sup> *Id.* at para. 17.

<sup>227</sup> *See, e.g.*, The Companies Act, 2013, No. 18, §135(3), Acts of Parliament, 2013.

<sup>228</sup> *See* Part II.

<sup>229</sup> The Companies Act, 2013, No. 18, § 166, Acts of Parliament, 2013 (India).

<sup>230</sup> *See* Afsharipour, *supra* note 48, at 359-61.

<sup>231</sup> *Id.* at 359 (“Given the significant delays in bringing a suit, there is little incentive for shareholders to advocate for their rights through the courts.”).

<sup>232</sup> *Id.* at 360.

<sup>233</sup> *Id.*

most decisions were appealed, leading to a backlog of cases on the docket.<sup>234</sup> To remedy this, in 2002, the parliament created the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) to handle company law cases that would have been tried by the high courts.<sup>235</sup>

The constitutional validity of the NCLT and NCLAT were challenged in 2010.<sup>236</sup> Ultimately, this litigation resulted in an Indian Supreme Court decision that outlined specific qualification and experience guidelines with respect to the members of the NCLT and NCLAT.<sup>237</sup> Two months after inviting applications for the posts of judicial members in the NCLT, the government put the process on hold in February 2014 when a writ petition challenging the validity of the NCLT and NCLAT was again filed in the Supreme Court.<sup>238</sup> The process will likely continue once the writ is resolved.<sup>239</sup>

The 2013 Act follows the Court's guidelines in *Union of India v. Gandhi* by providing specific qualifications for those on the tribunals.<sup>240</sup> The change will also be a welcome measure for newly introduced class action suits that would be filed in NCLTs, making it less cumbersome for small investors to seek speedy redress.<sup>241</sup> It must be noted, however, that the success of the class action suit in the United States was largely made possible by the contingency fee system.<sup>242</sup> India, on the other hand, does not support a system of

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<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> See *Union of India v. R. Gandhi*, (2010) 11 S.C.C. 1.

<sup>237</sup> *Id.*

<sup>238</sup> Shruti Shrivastava, *NCLT Recruitment Put on Hold Pending Writ Petition*, THE INDIAN EXPRESS, (Feb. 10, 2014, 2:13 AM), <http://indianexpress.com/article/business/companies/nclt-recruitment-put-on-hold-pending-writ-petition/>.

<sup>239</sup> *Id.*

<sup>240</sup> The Companies Act, 2013, No. 18, §§ 408-411, Acts of Parliament, 2013 (India).

<sup>241</sup> The Companies Act, 2013, No. 18, §§ 245, Acts of Parliament, 2013 (India).

<sup>242</sup> V. Parimala, *An Overview of Progressive Activism-The Class Action Suit*, 2 INDIAN J. OF APPLIED RESEARCH 137, 139 (2012), available at [http://www.theglobaljournals.com/ijar/file.php?val=December\\_2012\\_1357021020\\_](http://www.theglobaljournals.com/ijar/file.php?val=December_2012_1357021020_)

contingency fees for legal services; thusly, the success of class action suits will depend on the willingness of institutional investors to fund the suits.<sup>243</sup>

### *F. Subsequent Actions Post-Passage of the Companies Act, 2013*

The Act also requires a number of non-financial disclosures from the board, including disclosures on CSR.<sup>244</sup> To implement these disclosure requirements, SEBI issued a consultative paper in 2013 in order to update its listing agreement.<sup>245</sup> This paper shares the same shareholder centric ideas as the Report of the SEBI Committee on Corporate Governance,<sup>246</sup> making it clear that although it seeks to sync the requirements in the Act and listing rules, the focus remains shareholder centric.<sup>247</sup>

Based on the consultative paper, SEBI produced amendments to Clauses 35B and 49 of the listing agreement in April 2014 that became effective October 2014.<sup>248</sup> These amendments, while still retaining the shareholder focus of the consultative paper and prior rules, have also incorporated the stakeholder protection elements from the Act. However, the amended Clause 49 still prioritizes the rights of

becca\_42.pdf; see John Leubsdorf, *The Contingency Factor in Attorney Fee Awards*, 90 YALE L.J. 473, 477-78 (1981).

<sup>243</sup> Parimala, *supra* note 242, at 139.

<sup>244</sup> See The Companies Act, 2013, No. 18, § 134(3)(o), Acts of Parliament, 2013. Section 134(3) outlines the disclosures to be made by the board including the number of board meetings, a directors' responsibility statement, a statement on declaration given by independent directors, details of independent directors, the state of the company's affairs, a statement regarding risk management policy of the company and disclosure of CSR policy and its implementation. *Id.*

<sup>245</sup> SEC. AND EXCH. BD. OF INDIA, CONSULTATIVE PAPER ON REVIEW OF CORPORATE GOVERNANCE NORMS IN INDIA (2013).

<sup>246</sup> COMM. ON CORPORATE GOVERNANCE, *supra* note 117.

<sup>247</sup> SEC. AND EXCH. BD. OF INDIA, *supra* note 245, at ¶2.

<sup>248</sup> Circular from Amit Tandon, Deputy General Manager, Securities and Exchange Board of India, to All Recognised Stock Exchanges, Corporate Governance in Listed Entities-Amendments to Clauses 35B and 49 of the Equity Listing Agreement, 1 (April 17, 2014).

shareholders over that of other stakeholders.<sup>249</sup> For instance, with regard to board responsibilities, it states that the board should be accountable to the “company and shareholders” and that it should “act on a fully informed basis, in good faith, with due diligence and care, and in the best interests of the company and shareholders.”<sup>250</sup> Boards should also “apply high ethical standards” and “take into account the interests of stakeholders.”<sup>251</sup> The difference in the articulation of shareholder interests and stakeholder interests shows that the priority is still on the interests of shareholders.

### *G. The Companies Act, 2013, CSR, and Moving Forward*

The preceding analysis of the Act indicates that a number of the provisions ensure that the interests of stakeholders are taken into account, even if those provisions are imprecise and secondary to that of shareholders.

The CSR provision in the Act has been criticized for limiting the scope of CSR expenditures, deterring companies from practicing CSR from a more holistic view, as the CSR Voluntary Guidelines, 2009 encouraged them to do.<sup>252</sup> However, it appears from the June 2014 Circular that the MCA intends the categories under Schedule VII of the Act to be interpreted more expansively.<sup>253</sup> Others have criticized the government for requiring companies to spend money on development and basic welfare activities at all.<sup>254</sup>

The Act, coupled with the June 2014 Circular,<sup>255</sup> provides a tentative introduction to CSR requirements. The newness and resistance against this requirement, coupled with the long history of

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<sup>249</sup> For a brief summary of the shareholder primacy versus stakeholder theory debate see Anant K. Sundaram & Andrew C. Inkpen, *The Corporate Objective Revisited*, 15 *ORG. SCI.* 3, 350-363 (2004).

<sup>250</sup> Circular from Amit Tandon, *supra* note 248, at 8.

<sup>251</sup> *Id.*

<sup>252</sup> Afsharipour & Rana, *supra* note 106, at 223-24.

<sup>253</sup> See MINISTRY OF CORPORATE AFFAIRS, *supra* note 130.

<sup>254</sup> See, e.g., Mohd. Ahmed (Minor) v. Union of India & Ors., W.P.(C) 7279/2013 (Del.).

<sup>255</sup> See MINISTRY OF CORPORATE AFFAIRS, *supra* note 130.

strong shareholder-interests in India indicates uncertainty moving forward.

#### IV. IMPLEMENTATION OF THE CSR POLICY IN INDIA

This Section provides an empirical study of the CSR policies, activities, and reporting practices of the top fifty companies listed on the National Stock Exchange of India (NSE).<sup>256</sup> The annual reports of the companies for the financial year ending 2014 are the first documents requiring CSR reporting in compliance under the Act. While it is still too early to judge the full impact of the Act's CSR provision, an analysis of these documents offers insight into the existing CSR views, practices, and spending.

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<sup>256</sup> *Nifty*, ECON. TIMES, [http://economictimes.indiatimes.com/indices/nifty\\_50\\_companies.cms](http://economictimes.indiatimes.com/indices/nifty_50_companies.cms) (citing positions as displayed on Aug 23, 2014).

### A. Corporate Views of CSR

Forty-two out of the fifty companies analyzed have a CSR page on their official website which outlines their views about CSR.<sup>257</sup> The language used is indicative of whether they see CSR from a philanthropic lens or from a stakeholder orientation. A majority of the companies in the sample seemed to embrace the reasoning of the government; they view CSR as stemming from an obligation towards contributing to the development of the country by virtue of being corporate citizens.<sup>258</sup> CSR is seen as a philanthropic exercise.<sup>259</sup> A much smaller number of companies look at CSR as an extension of the company's obligation towards all stakeholders.<sup>260</sup> These companies think of CSR as a way of enhancing their reputation and therefore their overall business.<sup>261</sup> A small number of other companies seem to present a mix of both views.<sup>262</sup>

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<sup>257</sup> See *Corporate Social Responsibility*, JINDAL STEEL & POWER, <http://www.jindalsteelpower.com/sustainabilities/corporate-social-responsibility.html> (last visited Feb. 29, 2015); *About CSR*, GAIL (INDIA) LTD., [http://www.gailonline.com/final\\_site/aboutcsr.html](http://www.gailonline.com/final_site/aboutcsr.html) (last visited Feb. 29, 2015); *CSR, Go Green Initiative*, UNITED SPIRITS, <http://unitedspirits.in/usl-csr.aspx> (last visited Feb. 29, 2015); *Sustainable Development & Community*, SESA STERLITE, <http://www.sesasterlite.com/sustainable-development-community.aspx> (last visited Feb. 29, 2015); AMBUJA CEMENTS FOUND., <http://www.ambujacementfoundation.org/> (last visited Feb. 29, 2015); *Sustainability: Approach and Reports*, TATA MOTORS, <http://www.tatamotors.com/sustainability/sustainability.php> (last visited Feb. 29, 2015); *Sustainability*, LARSEN & TUBRO, <http://www.larsentoubro.com/corporate/sustainability/> (last visited Feb. 29, 2015); *Corporate and Social Responsibility (CSR)*, OIL & NAT'L GAS CORP. LIMITED, <http://ongcindia.ongc.co.in/wps/wcm/connect/ongcindia/Home/CSR/> (last visited Feb. 29, 2015); *Corporate Social Responsibility*, ACC LIMITED, [http://www.acclimited.com/newsite/corp\\_soc\\_resp.asp](http://www.acclimited.com/newsite/corp_soc_resp.asp) (last visited Feb. 29, 2015); *Social Report*, GRASIM INDUS., [http://www.grasim.com/media/features/social\\_report\\_gra.htm](http://www.grasim.com/media/features/social_report_gra.htm) (last visited Feb. 29, 2015); *Corporate Social Responsibility*, ICICI BANK, <http://www.icicibank.com/aboutus/about-us.page?#csr> (last visited Feb. 29, 2015); *Sustainability*, CIPLA, <http://www.cipla.com/Home/About-Us/Caring-for-the-Environment.aspx?mid=1289> (last visited Feb. 29, 2015); *CSR*, HDFC BANK, [http://www.hdfcbank.com/htdocs/aboutus/csr/index.html?src=hp\\_top\\_nav](http://www.hdfcbank.com/htdocs/aboutus/csr/index.html?src=hp_top_nav) (last

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visited Feb. 29, 2015); *Banking Towards a Sustainable Future*, INDUSIND BANK, <http://www.indusind.com/content/csr-home.html> (last visited Feb. 29, 2015); *Corporate Social Responsibility*, BHARAT PETROLEUM, [http://www.bharatpetroleum.com/EnergisingSociety/CSR\\_Policy.aspx?id=2](http://www.bharatpetroleum.com/EnergisingSociety/CSR_Policy.aspx?id=2) (last visited Feb. 29, 2015); *Corporate Social Responsibility*, BHARAT HEAVY ELECS. LTD., <http://www.bhel.com/CSR/index.php> (last visited Feb. 29, 2015); *Corporate Citizenship*, NTPC, <http://www.ntpc.co.in/en/corporate-citizenship> (last visited Feb. 29, 2015); *Sustainability*, TATA STEEL, <http://www.tatasteel.com/sustainability/index.asp> (last visited Feb. 29, 2015); *Social Responsibility and Community Development*, RELIANCE, [http://www.ril.com/html/aboutus/social\\_resp\\_comm\\_dev.html](http://www.ril.com/html/aboutus/social_resp_comm_dev.html) (last visited Feb. 29, 2015); *Sustainability @ Cairn*, CAIRN, <https://www.cairnindia.com/sustainability/sustainability-cairn> (last visited Feb. 29, 2015); AXIS BANK FOUND., <http://www.axisbankfoundation.org/> (last visited Feb. 29, 2015); *DLF Foundation*, DLF, <http://www.dlf.in/dlf/wcm/connect/dlf-corporate/home/foundation+overview/foundation-overview> (last visited Feb. 29, 2015); COAL INDIA LTD., <https://www.coalindia.in/Manage/ViewDocumentModule.aspx> (last visited Feb. 29, 2015); *Sustainability*, ULTRATECH, <http://www.ultratechcement.com/sustainability> (last visited Feb. 29, 2015); *CSR*, POWER GRID CORP. INDIA LTD., [http://www.powergridindia.com/\\_layouts/PowerGrid/User/ContentPage.aspx?PID=169&LangID=English](http://www.powergridindia.com/_layouts/PowerGrid/User/ContentPage.aspx?PID=169&LangID=English) (last visited Feb. 29, 2015); *Sustainability*, MARUTI SUZUKI, <http://www.marutisuzuki.com/sustainability.aspx> (last visited Feb. 29, 2015); DR. REDDY'S FOUNDATION, <http://dreddysfoundation.org/> (last visited Feb. 29, 2015); MAHINDRA RISE, <http://www.mahindra.com/How-We-Help> (last visited Feb. 29, 2015); *Financial Inclusion CSR Initiatives*, PUNJAB NAT'L BANK, <https://www.pnbindia.in/En/ui/Financial-Inclusion-CSR-Initiatives.aspx> (last visited Feb. 29, 2015); *Corporate Citizenship*, ASIAN PAINTS, <https://www.asianpaints.com/company-info/about-us/corporate-citizenship.aspx> (last visited Feb. 29, 2015); *Tech Mahindra Foundation*, TECH MAHINDRA, <http://www.techmahindra.com/society/default.aspx> (last visited Feb. 29, 2015); *Sustainability*, INFOSYS, <http://www.infosys.com/sustainability/> (last visited Feb. 29, 2015); *Corporate Sustainability*, TATA CONSULTANCY SERVS., [http://www.tcs.com/about/corp\\_responsibility/Pages/default.aspx](http://www.tcs.com/about/corp_responsibility/Pages/default.aspx) (last visited Feb. 29, 2015); *Sustainability*, ITC, <http://www.itcportal.com/sustainability/index.aspx> (last visited Feb. 29, 2015); *Corporate Social Responsibility*, STATE BANK OF INDIA, <http://www.sbi.co.in/portal/web/corporate-governance/corporate-social-responsibility> (last visited Feb. 29, 2015); *Corporate Responsibility*, KOTAK, <http://www.kotak.com/corporate-responsibility.html> (last visited Feb. 29, 2015); *The Unilever Foundation*, HINDUSTAN UNILEVER LTD., <http://www.hul.co.in/aboutus/foundation-2014/> (last visited Feb. 29, 2015); *CSR Guiding Principles*, BAJAJ AUTO, <http://www.bajajauto.com/csr.asp> (last visited

Being a responsible corporate citizen is understood to mean serving the community or society where the company operates. Some companies invest in education initiatives,<sup>263</sup> while others invest in “holistic development of host communities,”<sup>264</sup> “inclusive growth,”<sup>265</sup> and “economic upliftment of families below the poverty line with special focus on women’s empowerment, healthcare, sports and

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Feb. 29, 2015); *Sustainability Overview*, WIPRO, <http://www.wipro.com/about-Wipro/sustainability/> (last visited Feb. 29, 2015); *Sustainability*, HINDALCO, <http://www.hindalco.com/sustainability> (last visited Feb. 29, 2015); *Sustainability*, AIRTEL, <http://www.airtel.in/sustainability/> (last visited Feb. 29, 2015); *Socially Responsible Business*, HCL, <http://www.hcltech.com/socially-responsible-business> (last visited Feb. 29, 2015); *Corporate Social Responsibility*, HERO, [http://www.herocorp.com/corproate\\_social\\_responsibility.html](http://www.herocorp.com/corproate_social_responsibility.html) (last visited Feb. 29, 2015). Seven companies did not have CSR pages: Tata Power, Lupin, IDFC, Sun Pharma, Bank of Baroda, NMDC, and HDFC.

<sup>258</sup> See, e.g., *Education*, JINDAL STEEL AND POWER LTD., <http://jindalsteelpower.com/sustainabilities/education.html> (last visited Feb. 12, 2015). (“The company recognises education as one of the building blocks of any nation and consider it as a priority area for its CSR activities. The aim is to nurture young minds and educate them, so that they contribute to the nation’s development.”)

<sup>259</sup> See, e.g., *Socially Responsible Business*, HCL TECH., <http://www.hcltech.com/socially-responsible-business> (last visited Feb. 12, 2015); *Social Infrastructure*, RELIANCE INFRASTRUCTURE LTD., [http://rinfra.com/kar\\_social.html](http://rinfra.com/kar_social.html) (last visited Feb. 12, 2015) (“RInfra realizes the responsibilities that come with being a leader. Our desire to contribute to our nation’s society has encouraged us to take numerous initiatives/measures related to education, healthcare, environmental improvement and developmental programs.”)

<sup>260</sup> See, e.g., *Sustainability Report 2013*, LARSEN AND TOUBRO 15 (2013), <https://www.globalreporting.org/Pages/FR-Larsen-Toubro-2014.aspx> (last visited Feb. 23, 2015).

<sup>261</sup> *Id.*

<sup>262</sup> See, e.g., *Beyond Business*, INFOSYS, <http://www.infosys.com/careers/why-infosys/beyond-business/> (last visited Feb. 9, 2015).

<sup>263</sup> See, e.g., *Social Infrastructure*, *supra* note 259.

<sup>264</sup> ACC LTD., TOGETHER IN COMMUNITIES: CSR IN ACC AN UPDATE IN 2012 1 (2012).

<sup>265</sup> *CSR: Go Green Initiative*, UNITED SPIRITS, <http://unitedspirits.in/usl-csr.aspx> (last visited Feb. 12, 2015).

education.”<sup>266</sup> For some companies, the overt purpose of CSR is to “complement the role of the Government.”<sup>267</sup> Thus, the stated intent of the law seems to have framed the response of its intended audience: corporations have been willingly co-opted into performing public functions.<sup>268</sup>

A few companies have articulated their CSR vision in recognition of the interests of different stakeholders and understand it as part of their business interest.<sup>269</sup> Companies articulate it as “a critical component in enhancing and retaining stakeholder trust,”<sup>270</sup> “fundamental to our long-term success,”<sup>271</sup> and as “an investment in society and in its own future.”<sup>272</sup>

A few companies seem to simultaneously view CSR as a responsibility toward the country’s development and a way to take all stakeholder interests into consideration,<sup>273</sup> rejecting a dichotomy in

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<sup>266</sup> LUPIN. LTD., ANNUAL REP. 3, 87 (2014), *available at* <http://www.lupinworld.com/pdf/14/Lupin-Annual-Report-2014.pdf>.

<sup>267</sup> *Socially Responsible Business*, *supra* note 259.

<sup>268</sup> For an analysis of expressive corporate law, see Sandeep Gopalan, *Say on Pay and the SEC Disclosure Rules: Expressive Law and CEO Compensation*, 35 PEPP. L. REV. 207 (2008).

<sup>269</sup> *See, e.g., Sustainability Report 2013*, *supra* note 260, at 15.

<sup>270</sup> *Id.*

<sup>271</sup> *Striding Ahead*, CAIRN ENERGY FOR INDIA 2 <https://www.cairnindia.com/sites/default/files/csrbrochure.pdf> (last visited Feb. 23, 2015).

<sup>272</sup> *About Us*, KOTAK BANK, <http://www.kotak.com/about-us.html> (last visited Feb. 9, 2015).

<sup>273</sup> *See, e.g., Beyond Business*, *supra* note 262.

We are aware that growth is inextricably linked to the well being of our ecosystem - employees and business partners, local communities and the environment. Our sustainability policy guides interactions with stakeholders and influences day-to-day actions. As a responsible corporate citizen, we collaborate with clients and governments to develop sustainable solutions and governance frameworks.

*Id.*; *see also Vision and Mission*, ICICI FOUND., <http://www.icicifoundation.org/lombard?contype=3> (last visited Feb. 9, 2015) (“The

the understanding of CSR in terms of having a philanthropic or stakeholder-centric focus.

### B. CSR Activities

A majority of companies in the sample are engaged in CSR activities in the areas of education, healthcare, rural development, services for the underprivileged, disaster relief, sanitation, vocational skills training, women's empowerment, and environment protection. These activities are specifically listed under the Act. The companies surveyed concentrate mostly in the areas around their businesses, except when donations are made to national disaster relief funds.<sup>274</sup> This is in line with the Act's requirement that the company prioritize the local and surrounding areas.

Some companies attempt to expand what can be considered CSR activities. For instance, Cipla cut the price of cancer drugs as part of their "humanitarian" activities.<sup>275</sup> Similarly, United Spirits considers the identification and use of sustainable technology for its business operations as part of its CSR.<sup>276</sup> Three of the companies list affirmative action in employment practices as a CSR strategy.<sup>277</sup> Tata

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ICICI Group strives to make a difference to its customers, to the society and to the nation's development directly through its products and services, as well as through development initiatives and community outreach.").

<sup>274</sup> For example, DLF, based in Delhi has mid-day meal programs for disabled children in Delhi and other programs in surrounding areas like the cleanliness campaign in Haryana. See *Mid Day Meal Programme*, DLF FOUND., <http://www.dlffoundation.in/mid-day-meal-programme> (last visited Feb. 26, 2015).

<sup>275</sup> Divya Rajagopal, *Cipla Shocks Rivals by Slashing Cancer Drug Prices up to 75%*, ECON. TIMES (May 4, 2012), [http://articles.economictimes.indiatimes.com/2012-05-04/news/31573060\\_1\\_cancer-drug-iressa-sorafenib](http://articles.economictimes.indiatimes.com/2012-05-04/news/31573060_1_cancer-drug-iressa-sorafenib).

<sup>276</sup> *CSR: Go Green Initiative*, *supra* note 265.

<sup>277</sup> See *Affirmative Actions*, TATA MOTORS, <http://www.tatamotors.com/sustainability/CSR-09/pdf/affirmative-actions.pdf> (last visited, Feb. 23, 2015) *Affirmative Action Policy*, TATA POWER, <http://www.tatapower.com/sustainability/pdf/affirmative-action-policy.pdf> (last visited Feb. 23, 2015); *Code of Conduct*, BAJAJ AUTO

Motors and Tata Power, both belonging to the Tata group of companies, follow the group policy of using affirmative action or “positive discrimination” in favor of historically disadvantaged communities, without sacrificing merit.<sup>278</sup> Bajaj Auto’s code of conduct for affirmative action states, “competitiveness is interlinked with the well being of all sections of the Indian society.”<sup>279</sup> The Act does not see these activities as CSR since there is no resulting expenditure that can be listed based on reduction in the prices of cancer medication, use of sustainable technologies, or affirmative action policies. The Act clearly states that business activities are not counted as CSR.

Even though employee-related activities are not CSR, multiple companies highlight their employee programs in tandem with their CSR. Two companies listed employee-specific programs as CSR.<sup>280</sup> IndusInd Bank even lists an outing for their employees to watch flamingos as an environmental CSR activity because they are spreading the “green message.”<sup>281</sup> DLF runs an informal school for children of its low-income construction workers.<sup>282</sup> Further, numerous companies use employee volunteering and contributions as a CSR strategy. For example, Tata Motors highlighted its employees’ contributions to flood relief funds<sup>283</sup> and HDFC Bank encourages its

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[http://www.bajajauto.com/bajaj\\_investor\\_code\\_of\\_conduct.asp](http://www.bajajauto.com/bajaj_investor_code_of_conduct.asp) (last visited Feb. 9, 2015).

<sup>278</sup> See *Affirmative Actions*, supra note 277; *Affirmative Action Policy*, supra note 277.

<sup>279</sup> *Code of Conduct*, BAJAJ AUTO [http://www.bajajauto.com/bajaj\\_corporate\\_codeofconduct.asp](http://www.bajajauto.com/bajaj_corporate_codeofconduct.asp) (last visited Feb. 9, 2015).

<sup>280</sup> *Our Approach*, INDUSIND BANK, [https://www.indusind.com/cntent/csr-home/sustainability/our\\_approach.html](https://www.indusind.com/cntent/csr-home/sustainability/our_approach.html) (last visited Feb. 23, 2015); *Building Lives*, DLF FOUND., Sept. 2013, at 6, available at <http://www.dlffoundation.in/wp-content/uploads/2012/12/newsletter-low-res.pdf>.

<sup>281</sup> *Our Approach*, supra note 280.

<sup>282</sup> *Building Lives*, supra note 280.

<sup>283</sup> *Corporate Social Responsibility at Tata Motors*, TATA MOTORS, <http://www.tatamotors.com/investors/financials/69-ar-html/csr.html> (last visited Feb. 24, 2015).

employees to participate in blood drives.<sup>284</sup> Since the Act requires CSR activities to come directly from company profits, contributions of employees cannot be included.

Similarly, IndusInd Bank conducts seminars in India and abroad to encourage investment in India as a social development initiative.<sup>285</sup> It is unclear whether this type of spending qualifies as CSR expenditure under the Act. But given that the MCA was unwilling to accept an international doctor exchange program,<sup>286</sup> it is unlikely that they will accept international investment. Thus, the restrictive nature of the CSR provision in the Act has potential to cause companies to discontinue such CSR activities because they do not receive statutory credit.

Fourteen of the companies in the sample have incorporated a not-for-profit company, trust, or foundation (under section 25 of the 1956 Act), in order to undertake CSR activities.<sup>287</sup> Most companies,

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<sup>284</sup> *CSR Policy*, HDFC BANK 8 (April 1, 2014),

[http://www.hdfcbank.com/assets/pdf/CSR\\_Policy.pdf](http://www.hdfcbank.com/assets/pdf/CSR_Policy.pdf).

<sup>285</sup> *Society Development*, INDUSIND BANK (2010),

[https://www.indusind.com/content/csr-home/socio-economic\\_growth/project\\_socio-economic\\_support/project\\_socio-economic\\_societ\\_development.html](https://www.indusind.com/content/csr-home/socio-economic_growth/project_socio-economic_support/project_socio-economic_societ_development.html).

<sup>286</sup> See Circular from Seema Rath, *supra* note 173, at Annexure.

<sup>287</sup> See *Literacy Enhancement & Empowerment*, GAIL (INDIA) LTD.,

[http://www.gailonline.com/final\\_site/literacy.html](http://www.gailonline.com/final_site/literacy.html) (last visited Mar. 9, 2015); ICICI

FOUND., <http://www.icicifoundation.org/team> (last visited Mar. 9, 2015); CIPLA

FOUND., <http://www.ciplafoundation.co.za> (last visited Mar. 9, 2015); LUPIN

HUMAN WELFARE & RESEARCH FOUND., <http://www.lupinfoundation.in/> (last visited

Mar. 9, 2015); NTPC FOUND., [http://www.ntpc.co.in/corporate-](http://www.ntpc.co.in/corporate-citizenship/corporate-social-responsibility/ntpc-foundation)

[citizenship/corporate-social-responsibility/ntpc-foundation](http://www.ntpc.co.in/corporate-citizenship/corporate-social-responsibility/ntpc-foundation) (last visited Mar. 9,

2015); AXIS BANK FOUND., <http://www.axisbankfoundation.org/> (last visited Mar.

9, 2015); DLF FOUND., <http://www.dlffoundation.in/> (last visited Mar. 9, 2015);

IDFC, [http://www.idfc.com/foundation/our\\_firm/overview.htm](http://www.idfc.com/foundation/our_firm/overview.htm) (last visited Mar. 9,

2015); *Mahindra Foundation*, MAHINDRA, [http://www.mahindra.com/How-We-](http://www.mahindra.com/How-We-Help/Foundations/Mahindra-Foundation)

[Help/Foundations/Mahindra-Foundation](http://www.mahindra.com/How-We-Help/Foundations/Mahindra-Foundation) (last visited Mar. 9, 2015); TECH

MAHINDRA FOUND., <http://www.techmahindrafoundation.org/> (last visited Mar. 9,

2015); *Infosys Foundation Disaster Response*, INFOSYS FOUND.,

<http://www.infosys.com/infosys-foundation/> (last visited Mar. 9, 2015); *Annual*

*Report 2011-2012*, KOTAK, <http://www.kotak.com/annualreport2011-12/csr.html>

(last visited Mar. 9, 2015); *The Unilever Foundation*, HINDUSTAN UNILEVER LTD.,

<http://www.hul.co.in/aboutus/foundation-2014/> (last visited Mar. 9, 2015); AZIM

including these fourteen, also collaborate with local, state, or central governments for some of the projects. It is also common for companies to collaborate with non-governmental organizations (NGOs). These sorts of collaborations are all permissible according to the Act.

Further, in August 2014, Indian Prime Minister Narendra Modi emphasized, in his Independence Day Address, the need to focus on sanitation in all parts of the country. Calling it the “Clean India Campaign,” he called upon companies to prioritize this area in their CSR expenditure.<sup>288</sup> Responding, the Tata Consultancy Services and Bharti Foundation, in the same month, announced they would spend 200 crore rupees (thirty-three million dollars) on this campaign.<sup>289</sup>

### *C. CSR Committee and CSR Policy*

Forty-one of the surveyed companies (82%) state in their annual reports for the financial year ending 2014 that they constituted a CSR committee per the requirements of the Act.<sup>290</sup> Eight companies

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PREMI FOUND., <http://www.azimpremjifoundation.org/> (last visited Mar. 10, 2015) (Azim Premji Foundation is Wipro’s Foundation).

<sup>288</sup> Narendra Modi, Prime Minister of India, 68<sup>th</sup> Independence Day Speech (Aug. 16, 2014), *available at* <http://indianexpress.com/article/india/india-others/full-text-prime-minister-narendra-modis-speech-on-68th-independence-day/99/>.

<sup>289</sup> *TCS and Bharti Foundation Announced to Spend 200 Crore Rupees for Clean India Campaign*, JAGRAN JOSH (Aug. 19, 2014), <http://www.jagranjosh.com/current-affairs/tcs-and-bharti-foundation-announced-to-spend-200-crore-rupees-for-clean-india-campaign-1408449429-1>.

<sup>290</sup> JINDAHL STEEL & POWER, 2013-14 ANNUAL REP. 75 (2014), *available at* [www.jindahlsteelpower.com/img/admin/report/pdf/jspl\\_ar\\_2013\\_14-0.pdf](http://www.jindahlsteelpower.com/img/admin/report/pdf/jspl_ar_2013_14-0.pdf); GAIL (INDIA) LIMITED, 2013-14 ANNUAL REP. 28 (2014), *available at* [http://www.gailonline.com/final\\_site/pdf/2013-14/Annual%20Report%202013-14%20\(2\).pdf](http://www.gailonline.com/final_site/pdf/2013-14/Annual%20Report%202013-14%20(2).pdf); UNITED SPIRITS, CORPORATE GOVERNANCE REP. 28 (2014) *available at* [http://unitedspirits.in/Investor\\_Reports/316355286Annual\\_Report\\_2013-2014.pdf](http://unitedspirits.in/Investor_Reports/316355286Annual_Report_2013-2014.pdf); SESA STERLITE, ANNUAL REP. 2013-14 103 (2014) *available at* [http://www.sesasterlite.com/media/72861/sesa\\_sterlite\\_ar\\_13-14\\_pdf\\_for\\_email\\_.pdf](http://www.sesasterlite.com/media/72861/sesa_sterlite_ar_13-14_pdf_for_email_.pdf); AMBUJA CEMENTS LTD., ANNUAL REP. 2014 35 (2015) *available at* [http://www.ambujacement.com/wp-content/uploads/Ambuja%20Cement%20Annual%20Report%202014.pdf\\_0.pdf\\_1](http://www.ambujacement.com/wp-content/uploads/Ambuja%20Cement%20Annual%20Report%202014.pdf_0.pdf_1).

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pdf\_2.pdf; TATA MOTORS, 69TH ANNUAL REP. 2013-14 113 (2014) *available at* <http://www.tatamotors.com/investors/pdf/2014/69-Annual-Report.pdf>; TATA POWER, 95TH ANNUAL REP. 2013-14 76 (2014) *available at* <http://www.tatapower.com/investor-relations/pdf/95Annual-Report-2013-14.pdf>; LARSEN & TUBRO, 69TH ANNUAL REP. 2013-14 2 (2014) *available at* <http://www.lnt.in/LTReports1314/pdf/L&T%20Annual%20Report%202013-14-Final.pdf>; ONGC, ANNUAL REP. 2013-14 158 (2014) *available at* <http://www.ongcindia.com/wps/wcm/connect/c1199b2c-9f53-43cc-a200-5cb739d922ec/Annual+Report+Final.pdf?MOD=AJPERES>; ACC LIMITED, 79TH ANNUAL REP. 2014 ANNEXURE A (2014) *available at* [http://www.acclimited.com/newsite/finance/annual\\_report\\_2014.pdf](http://www.acclimited.com/newsite/finance/annual_report_2014.pdf); GRASIM, ANNUAL REP., 2013-14 24 (2014) *available at* [http://www.grasim.com/investors/downloads/Grasim\\_Annual\\_Report\\_2013-14.pdf](http://www.grasim.com/investors/downloads/Grasim_Annual_Report_2013-14.pdf); ICICI BANK, 20TH ANNUAL REP. AND ACCOUNTS 2013-2014 3 (2014) *available at* <http://www.icicibank.com/managed-assets/docs/investor/annual-reports/2014/Subsidiaries-of-ICICI-Bank-Annual-Report-FY2014.pdf>; CIPLA, 78TH ANNUAL REP. 2013-2014 12-14 (2014), *available at* [http://www.cipla.com/CiplaSite/Media/PDF/2014\\_08\\_06\\_78th\\_Annual\\_Report\\_2013\\_14\\_001.pdf](http://www.cipla.com/CiplaSite/Media/PDF/2014_08_06_78th_Annual_Report_2013_14_001.pdf); HDFC BANK, SUSTAINABILITY REP. 2013-14 21 (2014), *available at* <http://www.hdfcbank.com/assets/pdf/SustainabilityReport.pdf>; INDUSIND BANK, ANNUAL REP. 2013-14 68 (2014), *available at* [http://www.indusind.com/content/dam/indusind/AnnualReports/2013-14/2013-14/AnnualReport\\_IndusindFullFinal.pdf](http://www.indusind.com/content/dam/indusind/AnnualReports/2013-14/2013-14/AnnualReport_IndusindFullFinal.pdf); BHARAT PETROLEUM, ANNUAL REP. 2013-14 73 (2014), *available at* [http://www.bharatpetroleum.com/Admin/Finance/SterliteDocument/F000000184\\_bpcl.pdf](http://www.bharatpetroleum.com/Admin/Finance/SterliteDocument/F000000184_bpcl.pdf); BHEL, ANNUAL REP. 2013-14 77 (2014) *available at* [http://www.bhel.com/financial\\_information/pdf/13-14/BHEL%20Annual%20Report%202013-14%20%28English%29%20.pdf](http://www.bhel.com/financial_information/pdf/13-14/BHEL%20Annual%20Report%202013-14%20%28English%29%20.pdf); NTPC, 38TH ANNUAL REP. 2013-14 75 (2014), *available at* <http://ahcc.org.in/wfw/web%20ua%20water%20for%20welfare/NTPC-AR-2013-14.pdf>; RELIANCE INDUS. LTD., DIRECTORS' REP. (2014), *available at* [http://www.ril.com/ar13-14/director\\_report.html](http://www.ril.com/ar13-14/director_report.html); CAIRN INDIA, ANNUAL REP. 2013-14 58 (2014), *available at* [https://www.cairmindia.com/sites/default/files/annual\\_reports/Cairn\\_India\\_Annual\\_Report\\_2013-14.pdf](https://www.cairmindia.com/sites/default/files/annual_reports/Cairn_India_Annual_Report_2013-14.pdf); AXIS BANK, ANNUAL REP., 2013-14 104 (2014), *available at* <http://www.axisbank.com/download/Annual-Report-2014.pdf>; DLF LTD., ANNUAL REP. 2013-14 12 (2014), *available at* <http://www.dlf.in/dlf/DLFAR/201407/index.html>; IDFC, 17TH ANNUAL REP. 2013-2014 48 (2014), *available at* [http://www.idfc.com/pdf/idfc\\_17ar\\_shareholder\\_2013\\_14.pdf](http://www.idfc.com/pdf/idfc_17ar_shareholder_2013_14.pdf); ULTRATECH CEMENT LTD., ANNUAL REP. 2013-2014 25 (2014), *available at* [89](http://www.ultratechcement.com/images/downloads/UltraTech-Cement-AR-2012-</a></p></div><div data-bbox=)

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13.pdf; POWER GRID CORP. INDIA LTD., ANNUAL REP. 2013-14 33 (2014), *available at* <http://www.alstom.com/Global/India/ALSTOM%20T%20and%20D%20India%20Limited/Investor%20Relations/Annual%20Reports/Annual%20report%202013-14.pdf>; MARUTI SUZUKI, 2013-14 ANNUAL REP. 33 (2014), *available at* <https://marutistorage.blob.core.windows.net/marutisuzukipdf/Maruti%20AR%202014%20cover%20to%20cover%20dt%2006-08-14%20Deluxe.pdf>; DR. REDDY'S LABS. LTD., ANNUAL REP. 2013-14 69 (2014), *available at* <http://www.drreddys.com/investors/pdf/annualreport2014.pdf>; PUNJAB NAT'L BANK, ANNUAL REP. 2013-14 64 (2014), *available at* <http://pnbindia.in/new/Upload/English/Financials/PDFs/PNBANNUALREPORT201314.pdf>; NMDC LIMITED, 56TH ANNUAL REP. 2013-2014 99 (2014), *available at* <https://www.nmdc.co.in/Handlers/GetLatestAnnualReport.ashx>; ASIAN PAINTS, ANNUAL REP. 2013-14 16 (2014), *available at* [https://www.asianpaints.com/pdfs/company-info/investors/financial\\_results/AR13-14.pdf](https://www.asianpaints.com/pdfs/company-info/investors/financial_results/AR13-14.pdf); TECH MAHINDRA, ANNUAL REP. 2013-14 9 (2014), *available at* <http://www.techmahindra.com/sites/resourceCenter/Financial%20Reports/Annual%20Report%20FY13-14.pdf>; INFOSYS, ANNUAL REP. 2013-14 95 (2014), *available at* <http://www.infosys.com/investors/reports-filings/annual-report/annual/Documents/Infosys-AR-14.pdf>; ITC LTD., REP. AND ACCOUNTS 2014 1 (2014), *available at* <http://www.itcportal.com/about-itc/shareholder-value/annual-reports/itc-annual-report-2014/pdf/report-accounts-2014.pdf>; KOTAK, ANNUAL REP. 2013-14 110 (2014), *available at* <http://www.kotak.com/annualreport2013-14/Kotak%20AR%202013-14.pdf>; HINDUSTAN UNILEVER LTD., ANNUAL REP. 2013-14 45-46 (2014), *available at* [http://www.hul.co.in/Images/HUL-Annual-Report-2013-14\\_tcm114-391926.pdf](http://www.hul.co.in/Images/HUL-Annual-Report-2013-14_tcm114-391926.pdf); BAJAJ AUTO LTD., 7TH ANNUAL REP. 2013-14 59 (2014), *available at* [http://www.bajajauto.com/report/bal\\_2014\\_for\\_web1.pdf](http://www.bajajauto.com/report/bal_2014_for_web1.pdf); WIPRO, ANNUAL REP. 2013-2014 57 (2014), *available at* <http://www.wipro.com/documents/investors/pdf-files/Wipro-annual-report-2013-14.pdf>; HINDALCO INDUS. LTD., ANNUAL REP. 2013-14 39 (2014), *available at* [http://www.hindalco.com/Portals/0/Documents/investors/download/Hindalco\\_Annual\\_Report\\_2013-14.pdf](http://www.hindalco.com/Portals/0/Documents/investors/download/Hindalco_Annual_Report_2013-14.pdf); BHARTI AIRTEL LTD., ANNUAL REP. 2013-14 37 (2014), *available at* <http://www.airtel.in/wps/wcm/connect/21d7fb86-d781-4a36-b064-489f99f9f162/Full-Version.pdf?MOD=AJPERES>; HCL, ANNUAL REP. 2013-14 42 (2014), *available at* <http://www.hcltech.com/investors/results-reports?year=2013-14>; HDFC, 37<sup>th</sup> ANNUAL REP. 2013-14 22 (2014), *available at* <http://www.hdfc.com/sites/default/files/HDFC%20Main.pdf>.

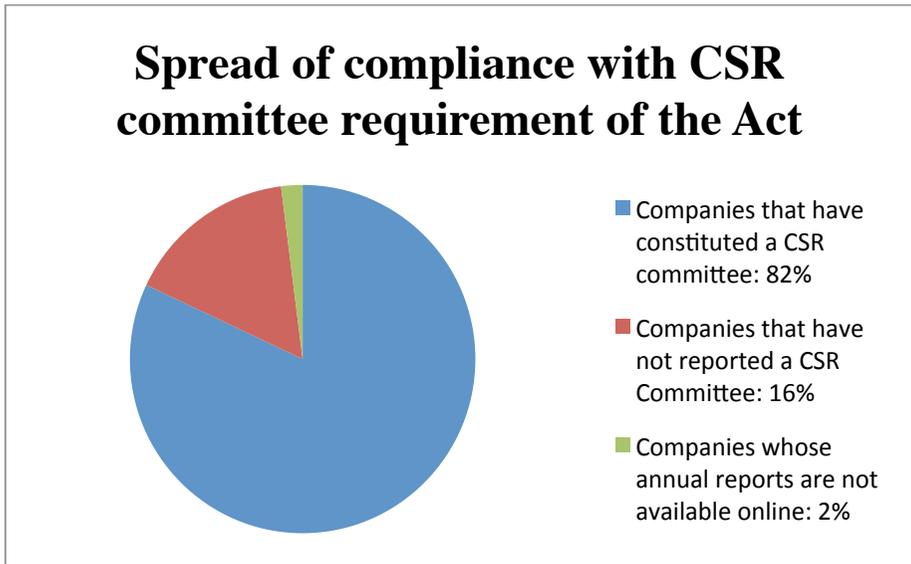
(16%) have either not constituted a CSR committee or have not reported it in the annual report,<sup>291</sup> and one company (2%) has not yet made its annual report available online.<sup>292</sup>

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<sup>291</sup> Amongst these companies Lupin mentions the existence of a “CSR head” in its 2014 Annual Report but does not mention a CSR committee. *See* LUPIN LTD., ANNUAL REP. 2014 81 (2014), *available at* <http://www.lupinworld.com/pdf/14/Lupin-Annual-Report-2014.pdf>. Tata Steel refers to its “CSR department” and “CSR Advisory Council” but not a board committee as required by the Act. *See* TATA STEEL, 107<sup>TH</sup> ANNUAL REP. 2013-2014 14 (2014), *available at* <http://www.tatasteel.com/investors/annual-report-2013-14/annual-report-2013-14.pdf>. The other six companies fail to mention CSR companies in their 2014 Annual Reports: SUN PHARMA, ANNUAL REP. 2013-14 (2014), *available at* <http://www.sunpharma.com/sites/all/themes/sunpharma/images/annual/2013-14%20SPIL-%20Annual%20Report.pdf>; COAL INDIA LTD., 2013-14 ANNUAL REP. & ACCOUNTS (2014), *available at* [https://www.coalindia.in/DesktopModules/DocumentList/documents/Coal\\_India\\_AR\\_2013\\_-\\_14\\_Deluxe\\_final\\_23092014.pdf](https://www.coalindia.in/DesktopModules/DocumentList/documents/Coal_India_AR_2013_-_14_Deluxe_final_23092014.pdf); BANK OF BARODA, ANNUAL REP. 2013-14 (2014), *available at* [http://www.bankofbaroda.com/download/BOB\\_AR\\_2014.pdf](http://www.bankofbaroda.com/download/BOB_AR_2014.pdf); TATA CONSULTANCY SERVS., ANNUAL REP. 2013-14 (2014), *available at* [http://www.tcs.com/investors/Documents/Annual%20Reports/TCS\\_Annual\\_Report\\_2013-2014.pdf](http://www.tcs.com/investors/Documents/Annual%20Reports/TCS_Annual_Report_2013-2014.pdf); STATE BANK OF INDIA, ANNUAL REP. 2013-14 (2014), *available at* [https://www.sbi.co.in/portal/documents/41076/60023/1403247921331\\_SBI\\_ANNUAL\\_REPORT\\_ENGLISH\\_2013\\_14.pdf/8a2bc6bb-a7a4-405d-98ec-a3749731bf76](https://www.sbi.co.in/portal/documents/41076/60023/1403247921331_SBI_ANNUAL_REPORT_ENGLISH_2013_14.pdf/8a2bc6bb-a7a4-405d-98ec-a3749731bf76); HERO, ANNUAL REP. 2013-14 (2014), *available at* [http://www.heromotocorp.com/en-in/uploads/Annual\\_Reports/pdf/20140708105458pdf291.pdf](http://www.heromotocorp.com/en-in/uploads/Annual_Reports/pdf/20140708105458pdf291.pdf).

<sup>292</sup> Only Mahindra & Mahindra has not made its 2014 Annual Report available online.

Chart 1:



However, all forty-one companies that constituted of a CSR committee in the annual report stated their CSR policy when referring to the committee.<sup>293</sup> Two of the companies stated that they are in the process of framing their CSR policy.<sup>294</sup>

Only thirty-six of the surveyed companies have their CSR policy available on their company website.<sup>295</sup> Chart 2 below shows

<sup>293</sup> See *supra* note 290 and accompanying text.

<sup>294</sup> WIPRO, *supra* note 290, at 57; HERO, *supra* note 290, at 97.

<sup>295</sup> *CSR Annual Report 2013 – 2014*, JINDAL STEEL AND POWER LTD., [http://www.jindalsteelpower.com/img/admin/csc\\_annual\\_report/pdf/csr-annual-report-2013-14.pdf](http://www.jindalsteelpower.com/img/admin/csc_annual_report/pdf/csr-annual-report-2013-14.pdf) (last visited Mar. 13, 2015); *GAIL CSR Policy*, GAIL, [http://www.gailonline.com/final\\_site/pdf/final\\_policy2010.pdf](http://www.gailonline.com/final_site/pdf/final_policy2010.pdf) (last visited Mar. 13, 2015); *Corporate Social Responsibility (CSR) Policy*, SESA STERLITE LTD., [http://www.sesasterlite.com/media/75184/csr\\_policy\\_sesa\\_sterlite\\_limited.pdf](http://www.sesasterlite.com/media/75184/csr_policy_sesa_sterlite_limited.pdf) (last visited Mar. 13, 2015); *Corporate Social Responsibility Policy*, AMBUJA CEMENTS, [http://www.ambujacement.com/wp-content/themes/ambuja/downloads/CSR\\_Policy.pdf](http://www.ambujacement.com/wp-content/themes/ambuja/downloads/CSR_Policy.pdf) (last visited Mar. 13, 2015); *Corporate Social Responsibility (CSR) Policy*, TATA MOTORS,

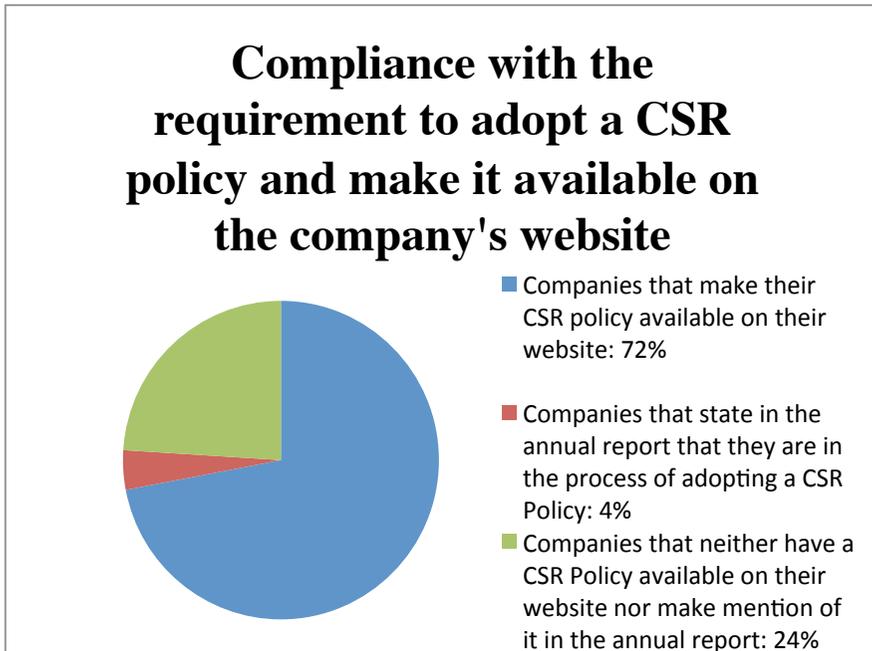
<http://www.tatamotors.com/investors/pdf/csr-policy-23july14.pdf> (last visited Mar. 13, 2015); *Corporate Social Responsibility (CSR) Policy*, TATA POWER, <http://www.tatapower.com/aboutus/pdf/csr-policy-14.pdf> (last visited Mar. 13, 2015); *Corporate Social Responsibility Policy*, ASSOC. CEMENT COS. LTD., <http://www.acclimited.com/newsite/pdf/Policy/ACCCSRPolicy.pdf> (last visited Mar. 13, 2015); *Corporate Social Responsibility Policy*, GRASIM INDUS. LTD., [http://www.grasim.com/about\\_us/Grasim\\_CSR\\_Policy\\_2013.pdf](http://www.grasim.com/about_us/Grasim_CSR_Policy_2013.pdf) (last visited, Mar. 13, 2015); *Framework of the ICICI Bank Limited Corporate Social Responsibility Policy*, ICICI BANK, <http://www.icicibank.com/managed-assets/docs/about-us/ICICI-Bank-CSR-Policy.pdf> (last visited Mar. 13, 2015); *CSR Policy #:1*, HDFC BANK LTD., [http://www.hdfcbank.com/assets/pdf/CSR\\_Policy.pdf](http://www.hdfcbank.com/assets/pdf/CSR_Policy.pdf) (last visited Mar. 13, 2015); *CSR Mission Statement*, INDUSIND BANK, <http://www.indusind.com/content/csr-home/our-approach/csr-policy.html> (last visited Mar. 13, 2015); *Corporate Social Responsibility: Policy*, BPCL, [http://www.bharatpetroleum.com/EnergisingSociety/CSR\\_policy.aspx?id=2](http://www.bharatpetroleum.com/EnergisingSociety/CSR_policy.aspx?id=2) (last visited Mar. 13, 2015); *Corporate Social Responsibility (CSR) Policy*, BHEL, [http://www.bhel.com/CSR/pdf/BHEL\\_CSR\\_Policy.pdf](http://www.bhel.com/CSR/pdf/BHEL_CSR_Policy.pdf) (last visited Mar. 13, 2015); *Summary of CSR Policy*, SUN PHARMA, <http://www.sunpharma.com/node/296297> (last visited Mar. 13, 2015); *Cipla Ltd. Corporate Social Responsibility Policy*, CIPLA, [http://www.cipla.com/CiplaSite/Media/PDF/Corporate\\_Social\\_Responsibility\\_Policy.pdf](http://www.cipla.com/CiplaSite/Media/PDF/Corporate_Social_Responsibility_Policy.pdf) (last visited Mar. 13, 2015); *NTPC Community Development (CD) Policy*, NTPC, <http://www.ntpc.co.in/download/csr-cd-policy-2010> (last visited Mar. 13, 2015); *Corporate Social Responsibility Policy*, RELIANCE INDUS. LTD., [http://www.ril.com/downloads/pdf/csr\\_policy.pdf](http://www.ril.com/downloads/pdf/csr_policy.pdf) (last visited Mar. 13, 2015); *Corporate Social Responsibility Policy*, CAIRN INDIA, [https://www.cairnindia.com/sites/default/files/CSR\\_policy\\_29052014.pdf](https://www.cairnindia.com/sites/default/files/CSR_policy_29052014.pdf) (last visited Mar. 13, 2015); *IDFC Corporate Social Responsibility Policy*, IDFC, <http://www.idfc.com/pdf/CSR-Policy.pdf> (last visited Mar. 13, 2015); *CIL's Policy for Corporate Social Responsibility (CSR)*, COAL INDIA LTD., [http://www.bcel.gov.in/newpdfs/CSR\\_Modified\\_2014.pdf](http://www.bcel.gov.in/newpdfs/CSR_Modified_2014.pdf) (last visited Mar. 13, 2015); *Corporate Social Responsibility Policy*, ULTRATECH CEMENT LTD., [http://www.ultratehcement.com/common/images/downloads/csr/CSR\\_Policy\\_2013\\_UltraTech\\_15\\_3\\_2013\\_FINAL.pdf](http://www.ultratehcement.com/common/images/downloads/csr/CSR_Policy_2013_UltraTech_15_3_2013_FINAL.pdf) (last visited Mar. 13, 2015); *Powergrid's Corporate Social Responsibility Policy 2014*, POWER GRID CORP. OF INDIA, <http://www.powergridindia.com/administrator/Lists/Menu/Attachments/172/POWERGRID%20CSR%20Policy%202014.pdf> (last visited Mar. 13, 2015); *How We Help*, MAHINDRA RISE, <http://www.mahindra.com/How-We-Help> (last visited Mar. 13, 2015); *Corporate Social Responsibility (CSR) Policy*, PUNJAB NAT'L BANK, <http://www.pnbhfl.com/pdf/CSR-policy-final.pdf> (last visited Mar. 13, 2015); *Asian Paints Limited Corporate Social Responsibility (CSR) Policy*, ASIAN PAINTS, <https://www.asianpaints.com/pdfs/company-info/aboutus/corporate->

the surveyed companies' compliance with the Act's requirement of making a CSR policy available, updated as of March 2015.

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citizenship/csr\_policy\_approved\_by\_board.pdf (last visited Mar. 13, 2015), *NMDC Corporate Social Responsibility (CSR) Policy*, NMDC, <https://www.nmdc.co.in/Hindi/Docs/CSR/CSR%20Policy.pdf> (last visited Mar. 13, 2015); *CSR Policy*, TECH MAHINDRA FOUND., <http://techmahindrafoundation.org/index.php/grants/csr-policy/> (last visited Mar. 13, 2015); *Corporate Social Responsibility Policy*, INFOSYS LTD., <http://www.infosys.com/investors/corporate-governance/Documents/corporate-social-responsibility-policy.pdf> (last visited Mar. 13, 2015); *Corporate Social Responsibility Policy*, ITC, <http://www.itcportal.com/about-itc/policies/corporate-social-responsibility-policy.aspx> (last visited Mar. 13, 2015), *State Bank of India Business Responsibility Policy*, STATE BANK OF INDIA, [http://www.sbi.co.in/portal/documents/41076/60023/1368188374190\\_SBI\\_BUSINESS\\_RESPONSIBILITY\\_POLICY.pdf/c692b421-08aa-4a9a-8708-85a09f9d502b](http://www.sbi.co.in/portal/documents/41076/60023/1368188374190_SBI_BUSINESS_RESPONSIBILITY_POLICY.pdf/c692b421-08aa-4a9a-8708-85a09f9d502b) (last visited Mar. 13, 2015); *Hindustan Unilever Limited Corporate Social Responsibility Policy*, HINDUSTAN UNILEVER, [http://www.hul.co.in/Images/HUL-CSR-Policy-Approved-on-22Sep2014\\_tcm114-398622.pdf](http://www.hul.co.in/Images/HUL-CSR-Policy-Approved-on-22Sep2014_tcm114-398622.pdf) (last visited Mar. 13, 2015); *Bajaj Auto Limited Corporate Social Responsibility Policy*, BAJAJ AUTO, <http://www.bajajauto.com/pdf/csr-policy-bal.pdf> (last visited Mar. 13, 2015); *Hindalco Industries Limited Corporate Social Responsibility Policy*, HINDALCO INDUS., [http://www.hindalco.com/Portals/0/Documents/investors/CSR\\_Policy\\_2013\\_Hindalco.pdf](http://www.hindalco.com/Portals/0/Documents/investors/CSR_Policy_2013_Hindalco.pdf) (last visited Mar. 13, 2015); *CSR Policy of Bharti Airtel Limited*, BHARTI AIRTEL, <http://www.airtel.in/wps/wcm/connect/fd7b3172-02e5-4e25-af7e-51d64cc17534/CSR+Policy.pdf?MOD=AJPERES&ContentCache=NONE> (last visited Mar. 13, 2015), *HCL Technologies Limited Corporate Social Responsibility Policy*, HCL TECHS. LTD., [http://www.hcltech.com/sites/default/files/corporate\\_social\\_responsibility\\_policy.pdf](http://www.hcltech.com/sites/default/files/corporate_social_responsibility_policy.pdf) (last visited Mar. 13, 2015); *HDFC Corporate Social Responsibility Policy*, HDFC, <http://www.hdfc.com/sites/all/themes/hdfc/downloads/CSRPoly-09092014-Website.pdf> (last visited Mar. 13, 2015).

Chart 2:



The policies of the companies, where available online, are framed very broadly. In many cases, the CSR policy lists most of the categories under the Act as activities to be pursued with a few focus areas for the particular year.<sup>296</sup>

This lack of specificity provides little information to stakeholders. It would be more meaningful for companies to disclose specific activities and programs. This specificity would also enable relevant stakeholders engaged in similar activities in the locality to contact the company with proposals for collaboration.

<sup>296</sup> See, e.g., *Policies*, TATA MOTORS, <http://www.tatamotors.com/about-us/policies.php> (last visited Feb. 29, 2015).

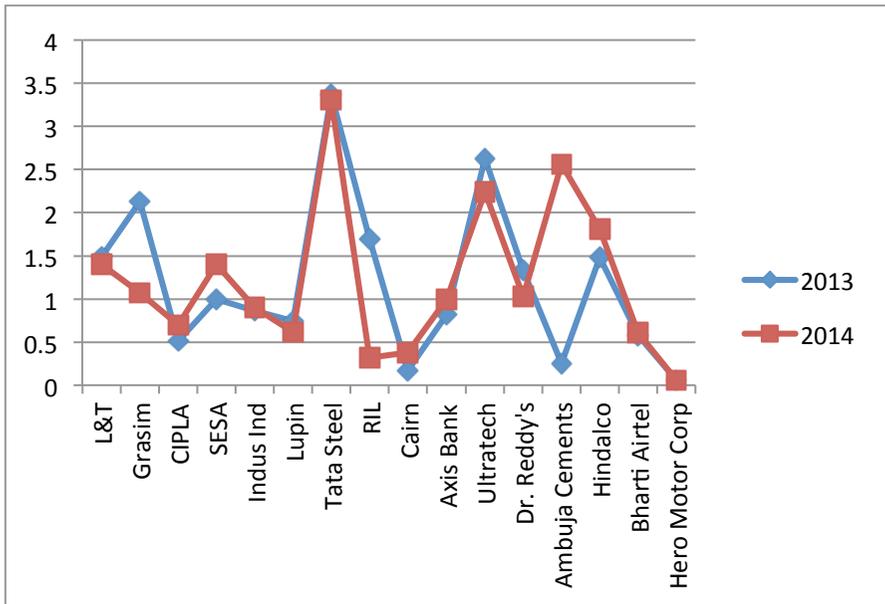
*D. Trends in CSR Spending and Disclosures*

Of the companies studied,<sup>297</sup> seventeen companies reported the percentage of CSR spending in both the financial years ending 2013 and 2014. Chart 3 compares the CSR spending of companies in these two years. Since the Act came into force in 2013, the 2014 CSR spending indicates the effect of the Act's CSR requirements.

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<sup>297</sup> Public companies have been removed from this part of the analysis because they were already required to spend for social and public purposes as per Chapter XII of the guidelines issued by the Department of Public Enterprises. *See Guidelines for Administrative Ministries/Departments and Public Sector Enterprises*, DEP'T OF PUB. ENTERS., [http://dpe.nic.in/important\\_links/dpe\\_guidelines](http://dpe.nic.in/important_links/dpe_guidelines). The public sector companies on the list of fifty companies surveyed are GAIL India Limited, ONGC, BPCL, BHEL, NTPC, IDFC, Coal India Ltd., Power Grid Corporation of India Ltd., Punjab National Bank, Bank of Baroda, NMDC and SBI. *See Nifty, supra* note 256.

Chart 3: CSR spending of companies in the financial years ending 2013 (blue) and 2014 (red) expressed as a percentage of the company’s profits after tax in the particular year.



As made clear from the chart above, some companies have increased their CSR spending in 2014. However for Tata Steel and Hero Motor Corporation, show an insignificant change in the spending.<sup>298</sup> For Ultratech, the company spent slightly less in 2014.<sup>299</sup>

<sup>298</sup> Tata Steel spent 3.31% of its profit after tax in 2014 on CSR, TATA STEEL, *supra* note 291, at 121, and 3.37% of its profit after tax in 2013 on CSR. TATA STEEL, 106TH ANNUAL REP. 2012-2013 101 (2013). Hero Motor Corp spent 0.06% of its profit after tax in both 2014 and in 2013 on CSR. HERO, *supra* note 291, at 91; HERO, ANNUAL REP. 2013 90 (2013), *available at* [http://www.heromotocorp.com/en-in/uploads/Annual\\_Reports/pdf/20130809004805-pdf-184.pdf](http://www.heromotocorp.com/en-in/uploads/Annual_Reports/pdf/20130809004805-pdf-184.pdf).

<sup>299</sup> Ultratech reduced its CSR spending from 2.63% of profit after tax in 2013 (ULTRATECH CEMENT LTD., *supra* note 290, at 42) to 2.24% of profit after tax in 2014 (ULTRATECH CEMENT LTD., ANNUAL REP. 2013-2014 39 (2014), *available at* [http://www.ultratechcement.com/common/images/downloads/UltraTech\\_Annual\\_Report\\_2013\\_14.pdf](http://www.ultratechcement.com/common/images/downloads/UltraTech_Annual_Report_2013_14.pdf)).

The CSR spend of some companies being almost close to 2% of their profit after tax even in 2013 can be explained by the fact that the Companies Bill (before it was passed by the legislature and notified as the Companies Act, 2013) carried the CSR provision since 2010. Thus, companies were aware of the eventual introduction of the provision. Yet, it was only in 2013 that most companies started disclosing the percentage of profit after tax spent on CSR.<sup>300</sup> Very few of the fifty companies (excluding public sector companies) describe the new CSR requirements in their 2013 annual reports make mention of the CSR provision in the Bill in their 2013 annual reports and have attempted to align their CSR reporting practices in line with the Bill.<sup>301</sup>

Out of the sixteen companies compared in Chart 3,<sup>302</sup> only Ambuja Cements Ltd. provided the amount spent on CSR in its annual report for the years prior to 2013. Ambuja Cements reported the percentage of profit after tax spent on CSR as 3.07% in 2012.<sup>303</sup> In 2011 and 2010, Ambuja Cements reported just the total amount it spent on CSR.<sup>304</sup>

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<sup>300</sup> See, e.g., TATA STEEL, ANNUAL REP. 2011-2012 (2012), available at <http://www.tatasteel.com/investors/annual-report-2011-12/annual-report-2011-12.pdf>. But, just one year later, Tata Steel disclosed the percentage spent on CSR. See TATA STEEL, *supra* note 298, at 101.

<sup>301</sup> *Contra* AMBUJA CEMENTS LTD., ANNUAL REP. 2013 47 (2013), available at [http://www.ambujacement.com/wp-content/uploads/Ambuja%20Cement%20Annual%20Report\\_2013.pdf\\_0.pdf](http://www.ambujacement.com/wp-content/uploads/Ambuja%20Cement%20Annual%20Report_2013.pdf_0.pdf).

<sup>302</sup> In 2013, Wipro reported spending 0.25% of its profit after taxation on CSR even though this does not match the numbers from their 2013 Annual Report. Wipro spent 160 million rupees on CSR and had 896 million rupees in profit after tax, amounting to 17.86% instead of .025%. For this reason, Wipro was not included in Chart 3. WIPRO, ANNUAL REP. 2012-2013 102, 147 (2013), available at <http://www.wipro.com/documents/investors/pdf-files/Wipro-annual-report-2012-13.pdf>.

<sup>303</sup> AMBUJA CEMENTS LTD., ANNUAL REP. 2012 54 (2012), available at <http://www.ambujacement.com/wp-content/uploads/report-2012.pdf>.

<sup>304</sup> See AMBUJA CEMENTS LTD., ANNUAL REP. 2011 73 (2011), available at <http://www.ambujacement.com/wp-content/uploads/report-2011.pdf>; AMBUJA CEMENTS LTD., ANNUAL REP. 2010 83 (2010), available at <http://www.ambujacement.com/wp-content/uploads/report-2010.pdf>.

Other companies describe their CRS work more generally prior to the Act requirement. For instance, Cipla details its donations to its foundation and charitable trust,<sup>305</sup> which is not necessarily spent by the charitable trust and foundation in a particular year. While other companies have not disclosed the exact amount spent on CSR in their annual reports, most companies mention various awards and recognitions obtained for its CSR practices.<sup>306</sup>

With respect to the actual disclosure of CSR expenditure as required by the Act, just above half of the sample of companies surveyed had disclosed the amount they spent under CSR activities for the year as a percentage of the company's profits in the annual report for the 2014 financial year.<sup>307</sup> Although the Act requires the minimum amount of CSR expenditure to be 2% of the average net profits of the preceding three years,<sup>308</sup> the SEBI Circular on Business Responsibility Reports requires companies to disclose their yearly CSR spending as a percentage of the profits of each year.<sup>309</sup> Reading the requirements together, companies that come under the ambit of both the Act's CSR provision and the SEBI 2012 Circular must disclose the amount they spend on CSR activities as a percentage of the profits for the particular year. Moreover, this amount must be a minimum of 2% of the company's average net profits from the preceding three years.<sup>310</sup> On average, the companies that reported the amount they spent on CSR as a percentage of their yearly profits have

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<sup>305</sup> CIPLA, 76TH ANNUAL REP., 2011-2012 60 (2012), *available at* <http://www.cipla.com/CiplaSite/Media/PDF/Annual-Reports/Seventy-Sixth-Annual-Report-2011-2012.pdf?ext=.pdf>.

<sup>306</sup> *See, e.g.*, Tata Steel describes its employee volunteerism in its 2012 Annual Report. TATA STEEL, *supra* note 300, at 58; Jindahl Steel & Power list the CSR-related awards in its 2012 Annual Report. JINDAHL STEEL & POWER, ANNUAL REP. 2011-2012 24-25 (2012) *available at* [http://www.jindalsteelpower.com/img/admin/report/pdf/File\\_2012\\_Document1.pdf](http://www.jindalsteelpower.com/img/admin/report/pdf/File_2012_Document1.pdf).

<sup>307</sup> *See* Table 2.

<sup>308</sup> The Companies Act, 2013, No. 18, § 135(5) Acts of Parliament, 2013.

<sup>309</sup> Circular from the Sunil Kadam, *supra* note 143.

<sup>310</sup> The Companies Act, 2013, No. 18, § 135(5) Acts of Parliament, 2013.

spent 1.80%.<sup>311</sup> Thus, these companies must increase their CSR spending to meet the minimum CSR spending requirement of the Act.

In summary, the mandatory language of the CSR provision appears to have provided some compliance. Still, there is significant variance in individual company compliance with regard to the activities described. This may change as companies learn and as intermediaries are created to administer the spending activities. Overall, the evidence indicates individual companies' engagement with the spirit of CSR; ensuing years ought to provide better data for analysis.

## V. PROPOSAL FOR MANDATORY CSR IN THE UNITED STATES

Accelerating income and wealth inequality cannot be ignored. At a global level, Piketty proposes an international capital tax recognizing,

[It] would require international co-operation. This is difficult but feasible. The US and the EU each account for one-quarter of world output. If they could speak with one voice, a global registry of financial assets would be within reach. Sanctions could be imposed on tax havens that refused co-operation.<sup>312</sup>

The prospects for such cooperation on a global tax are extremely slim at the present time and are bedeviled with serious conceptual difficulties. Nonetheless, there have been calls in the United States for significant tax changes.<sup>313</sup>

However, there are several problems with this particular

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<sup>311</sup> See Table 2.

<sup>312</sup> Piketty, *supra* note 38.

<sup>313</sup> See, e.g., Glenn Hubbard, *Tax Reform is the Best Way to Tackle Income Inequality*, WASH. POST (Jan. 10, 2014), [http://www.washingtonpost.com/opinions/tax-reform-is-the-best-way-to-tackle-income-inequality/2014/01/10/112710ea-68ca-11e3-a0b9-249bbb34602c\\_story.html](http://www.washingtonpost.com/opinions/tax-reform-is-the-best-way-to-tackle-income-inequality/2014/01/10/112710ea-68ca-11e3-a0b9-249bbb34602c_story.html).

solution. Tax reform faces a deeply divided polity. The current system of funding for political parties means that those with the greatest ability to contribute financially are unlikely to support a cause directly contrary to their self-interest. Any legislative proposal has little chance of success.<sup>314</sup>

In addition to the difficulty of getting the proposal through Congress, the incompetency of the government once the proposal is passed is also a significant challenge. Administrative costs are high.<sup>315</sup> Further, the implementation could be challenging given how well lawyers work around existing law to avoid taxes. A tax-based solution also focuses exclusively on the state's role in reducing inequality and ignores the responsibility of corporations.

Further, requiring companies to allocate CSR expenditures prevents potential social and environmental problems. For example, when a company's CSR activity improves employment, wages, and working conditions for people in a community where it has a large footprint, there may be a subsequent decline in poverty, health problems, and crime. In the absence of such pro-social behavior, the state is left with the burden of providing unemployment allowances, poverty alleviation measures, more healthcare facilities and remedies, and more law enforcement officials. CSR has the potential to intervene early and reduce the need for the state to correct these problems with tax revenues. Similarly, when a company's CSR activities limit or eliminate pollution and environmental degradation in the local community, the state does not have to draw on tax revenues or special fines to clean up. Moreover, the company's CSR activity might spur investment in cleaner technology, generate new

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<sup>314</sup> See, e.g., Stephen Ohlemacher, *Mitch McConnell says U.S. House's Effort to Reform Tax Code Has No Chance in Senate*, CLEVELAND.COM, (Feb. 25, 2014, 10:27 PM), [http://www.cleveland.com/nation/index.ssf/2014/02/mitch\\_mcconnell\\_says\\_us\\_houses.html](http://www.cleveland.com/nation/index.ssf/2014/02/mitch_mcconnell_says_us_houses.html).

<sup>315</sup> See, e.g., Avik Roy, *The Myth of Medicare's 'Low Administrative Costs'*, FORBES (June 30, 2011, 3:35 PM), <http://www.forbes.com/sites/theapothecary/2011/06/30/the-myth-of-medicares-low-administrative-costs/>.

inventions that have wider applications, and new jobs that did not exist previously.

Finally, companies are also arguably better at tackling local problems because they typically has deeper roots in the community compared to expansive government programs. Further, employees who live in the community are more likely to be motivated to engage in socially beneficial activities.<sup>316</sup>

This proposal suggests mandatory CSR by U.S. corporations modelled after the Companies Act, 2013 provision, with some important modifications. First, firms with an annual turnover less than than \$100 million, regardless of the number of employees, will be exempt. All firms meeting this threshold will be required to spend 1% of their net profit averaged over the previous three years on designated CSR activities, including those aimed at reducing inequality. This proposal advocates a broad definition for these activities, similar to that articulated in the European Commission's Communication for a renewed European Union strategy 2011–2014 for CSR.<sup>317</sup> Companies would be required to:

have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of: maximiz[ing] the creation of shared value for their owners/shareholders and for their other stakeholders and society at large; [and] identifying, preventing and mitigating their possible adverse

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<sup>316</sup> See Jeanne Meister, *Corporate Social Responsibility: A Lever for Employee Attraction and Engagement*, FORBES (June 7, 2012, 11:03 AM), <http://www.forbes.com/sites/jeannemeister/2012/06/07/corporate-social-responsibility-a-lever-for-employee-attraction-engagement/>.

<sup>317</sup> See EUROPEAN COMM., COMMUN FROM THE COMM. TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECON. AND SOCIAL COMM. AND THE COMM. OF THE REGIONS (2011).

impacts.<sup>318</sup>

Under this model, as long as a company is able to show expenditures of money amounting to 1% of its annual net profit for activities in the designated areas, the CSR mandate would be satisfied. We recognize that the broad language will generate incentives for creative compliance.<sup>319</sup>

In addition, companies will have to disclose their CSR policies, the list of causes supported with a statement of total expenditure for each project, and provide a narrative description about their activities. Such disclosure will enable dissemination of information to society about the value generated by the company's activities and will facilitate monitoring. Each company's CEO and CFO will also have to certify the CSR report as an accurate statement of the company's activities.

Individual states may not appreciate federal regulation of this kind.<sup>320</sup> Ultimately, these objections are not warranted for several reasons. First, the federalization of corporate governance is an entrenched practice, as evidenced by statutes like the Sarbanes-Oxley Act<sup>321</sup> and the Dodd-Frank Act.<sup>322</sup> For instance, Dodd-Frank contains rules about disclosure on executive compensation, pay ratios, and clawbacks,<sup>323</sup> all progressive intrusions into areas typically regulated by state law.

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<sup>318</sup> *Id.* at 6.

<sup>319</sup> See, e.g., *Australian Privacy Law and Practice: Structural Reform of the Privacy Principles*, AUSTRALIAN LAW REFORM COMM'N (2008), available at, <http://www.alrc.gov.au/publications/18.%20Structural%20Reform%20of%20the%20Privacy%20Principles/principles-based-regulation> (discussing "creative compliance" in the context of privacy law).

<sup>320</sup> See *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 89 (1987) ("No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations, including the authority to define the voting rights of shareholders.").

<sup>321</sup> Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002).

<sup>322</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>323</sup> *Id.*

Further, the Commerce Clause of the U.S. Constitution confers ample power on Congress to legislate in this area.<sup>324</sup> The long historical record of such legislation ranges from the securities statutes in 1933, to current insider trading rules, to board appointments and composition rules.<sup>325</sup>

Additional traditional critiques about federalization of corporate law are based on the idea that states should compete to offer a plurality of legal regimes, that such competition among states facilitates experimentation with different approaches to regulation, and that, ultimately, such regulatory competition can generate a race for the most effective laws.<sup>326</sup> But, given that inequality is a national problem, it needs a national solution.

Congress has already signalled a clear desire to examine the contributory role of corporate pay practices in relation to the problem of inequality in the Dodd-Frank Act.<sup>327</sup> Section 953(b) of the statute requires the SEC to “amend section 229.402 of title 17, Code of Federal Regulations”<sup>328</sup> in order to require all issuers to disclose the following:

- (A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer; (B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and (C) the ratio of the amount described in subparagraph

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<sup>324</sup> William W. Bratton & Joseph A. McCahery, *The Equilibrium Content of Corporate Federalism*, 41 WAKE FOREST L. REV. 619, 624 (2006).

<sup>325</sup> Mark J. Roe, *Delaware and Washington as Corporate Lawmakers*, 34 DEL. J. CORP. L. 1, 10 (2009); *Securities as Subjects of Interstate Commerce*, 19 ST. LOUIS L. REV. 69 (1934).

<sup>326</sup> Michael Klausner, *Corporations, Corporate Law, and Networks of Contracts*, 81 VA. L. REV. 757, 842 (1995).

<sup>327</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act § 953.

<sup>328</sup> *Id.* at § 953(b).

(A) to the amount described in subparagraph (B).<sup>329</sup>

The SEC proposed rules in late 2013 to give effect to these pay ratio provisions.<sup>330</sup>

Further, although this proposal is innovative, CSR reporting is a growing trend despite the absence of a legal mandate in the United States. A study by the Governance & Accountability Institute shows that CSR reports filed by companies in the S&P 500 grew from 19% in 2011 to over 53% in 2012.<sup>331</sup> KPMG reported that there was a 74% to 83% increase in CSR reporting in the United States between 2008-2011.<sup>332</sup> The same firm's International Survey of Corporate Responsibility Reporting in 2011 showed that 95% of the 250 top international companies provided CSR reports.<sup>333</sup> Therefore, this proposal will provide a legal structure and formal expectations for many companies by framing what these companies already do rather than imposing an entirely new obligation. For other companies, it will bring them in line with social expectations.

This proposal will generate numerous benefits: it will enable companies to make better decisions for the long-term sustainability of the business by requiring them to engage with their stakeholders. This engagement is likely to yield better buy-in, less resistance, and greater

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<sup>329</sup> *Id.*

<sup>330</sup> See Press Release, U.S. Securities and Exchange Commission, SEC Proposes Rules for Pay Ratio Disclosure, (Sept. 18, 2013), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539817895#.VOAOS8ZBL8m>.

<sup>331</sup> James McRitchie, *Most S&P 500 Companies Now Reporting on ESG Issues*, CORPORATE GOVERNANCE (Dec. 20, 2012), <http://corp.gov.net/2012/12/most-sp-500-companies-now-reporting-on-esg-issues/>.

<sup>332</sup> *Corporate Responsibility Reporting Has Become De Facto Law for Business*, KPMG (Nov. 7, 2011), <https://web.archive.org/web/20130708125855/http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/corporate-responsibility/Pages/de-facto-business-law.aspx> (accessed by searching KPMG in the Internet Archive index).

<sup>333</sup> KPMG, KPMG INT'L SURVEY OF CORPORATE RESPONSIBILITY REPORTING 2011 6 (2011), <http://www.kpmg.com/PT/pt/IssuesAndInsights/Documents/corporate-responsibility2011.pdf>.

information for both sides. This proposal will also enhance better financial performance for firms and superior returns for stakeholders, including shareholders. Research shows share prices increase due to CSR disclosure because reporting reduces information asymmetry for investors; reduces off balance sheet liabilities,<sup>334</sup> such as future climate change costs;<sup>335</sup> increases off balance sheet assets, such as brand intangibles;<sup>336</sup> enhances reputation, which is a valuable intangible asset;<sup>337</sup> allows new CSR responsive markets to be reached; decreases community resistance from non-government organizations (NGOs) and civil society to new projects; and yields a positive reputation that adds value to the brand. This proposal will also increase trust across a range of constituencies, including consumers and communities.<sup>338</sup> It could play a significant role in attracting high caliber prospective employees and contribute to better productivity in existing employees because it aligns with their desire to make a social contribution.<sup>339</sup> Firms could also benefit from both improved access to funding at a lower cost and enhanced financial performance from

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<sup>334</sup> For example, Siemens views sustainable supply chain management as a means of minimizing the off balance sheet risks associated with supply chains in emerging markets. See *Sustainability at Siemens*, SIEMENS, <https://w9.siemens.com/cms/supply-chain-management/en/sustainability/approach/Pages/strategy.aspx>.

<sup>335</sup> Ioannis Ioannou & George Serafeim, *The Consequences of Mandatory Sustainability Reporting* 14-15 (Harvard Business School, Working Paper No. 11-100, 2014), available at [http://www.hbs.edu/faculty/Publication%20Files/11-100\\_7f383b79-8dad-462d-90df-324e298acb49.pdf](http://www.hbs.edu/faculty/Publication%20Files/11-100_7f383b79-8dad-462d-90df-324e298acb49.pdf).

<sup>336</sup> Paul Griffin, *The Role of Voluntary Corporate Social Responsibility Disclosures in Increasing Shareholder Value*, UC DAVIS GRADUATE SCH. OF MGMT. (March 1, 2013), <http://gsm.ucdavis.edu/blog-feature/role-voluntary-corporate-social-responsibility-disclosures-increasing-shareholder-value>.

<sup>337</sup> Marc Vilanova et al., *Exploring the Nature of the Relationship Between CSR and Competitiveness*, 87 J. BUS. ETHICS 57, 59 (2009).

<sup>338</sup> Marc Orlitzky & John D. Benjamin, *Corporate Social Performance and Firm Risk: A Meta-Analytic Review*, 40 BUS. & SOC'Y 369, 369 (2001).

<sup>339</sup> Sandra Waddock & Samuel B. Graves, *The Corporate Social Performance-Financial Performance Link*, 18 STRATEGIC MGMT. J. 303, 314-15 (1997).

such disclosure.<sup>340</sup> Finally, it will enable principals to reduce agency costs by deploying the provided information to constrain the actions of management and control adverse selection and moral hazard.

Critics will resist this proposal on several grounds. First, it fundamentally restricts the freedom of market actors.<sup>341</sup> But, such an argument is blind to the reality that CEOs may actually advocate for CSR and the lack of a legal mandate might not allow them, for corporate political reasons, to make the appeal to the rest of the company.<sup>342</sup> As Friedman himself conceded in the *New York Times Magazine*,

The businessmen believe that they are defending free enterprise when they declaim that business is not concerned “merely” with profit but also with promoting desirable “social” ends; that business has a “social conscience” and takes seriously its responsibilities for providing employment, eliminating discrimination, avoiding pollution and whatever else may be the catchwords of the contemporary crop of reformers.<sup>343</sup>

CEOs today are no different from those in Friedman’s time. The

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<sup>340</sup> Marc Orlitzky, et al., *Corporate Social and Financial Performance: A Meta-Analysis*, 24 *ORG. STUD.* 403, 423 (2003) (“Based on this meta-analysis integrating 30 years of research, the answer to the introductory question posed by *Business Week* is affirmative. The results of this meta-analysis show that there is a positive association between [corporate social/environmental performance] and [corporate financial performance] across industries and across study contexts.”).

<sup>341</sup> Anel Kamani, *Mandatory CSR in India: A Bad Proposal*, *STANFORD SOCIAL INNOVATION REV.* (May 20, 2013), [http://www.ssireview.org/blog/entry/mandatory\\_csr\\_in\\_india\\_a\\_bad\\_proposal](http://www.ssireview.org/blog/entry/mandatory_csr_in_india_a_bad_proposal).

<sup>342</sup> This might be implied from the UN Global Compact, Accenture CEO Study on Sustainability indicating that 83% of CEOs believed that governments should do more to enable sustainability business efforts. See *UN Global Compact, Accenture CEO Study on Sustainability Infographic*, ACCENTURE (2013), <http://www.accenture.com/Microsites/ungc-ceo-study/Documents/pdf/ungc-infographic-vector-rgb.pdf>.

<sup>343</sup> Friedman, *supra* note 33.

CEO of Morgan Stanley recently stated, “[W]e have a responsibility to manage and leverage our resources...in a way that promotes a healthy environment and community.”<sup>344</sup> The Managing Director of Starbucks Australia said, “[S]hareholders . . . are looking for companies that truly have values that they can relate to, and are investing in companies that have corporate social responsibility initiatives. Customers are asking more and more from companies than just great product.”<sup>345</sup> Takanobu Ito, CEO of Honda said:

[S]ociety's expectations of Honda are shifting towards a long term, sustainability focused perspective. In response to these changes, for the three year period starting in 2014, we will take on the highest caliber ESG (Environment, Society, and Governance) activities, to ensure that Honda continues to be a sustainable business.<sup>346</sup>

Further, the Accenture UN Global Compact Study of CEOs in 2013 found that 84% of CEOs believe that “business should lead efforts to define and deliver on future development priorities.”<sup>347</sup>

But, the previous examples are a small sample of views. Some CEOs may be unlikely to commit millions of dollars in CSR expenditures if they do not believe it is in the interests of their companies.

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<sup>344</sup> Tara Weiss, Matthew Kirdahy, & Klaus Kneale, *CEOs on CSR*, FORBES (Oct. 16, 2008, 6:00 PM), [http://www.forbes.com/2008/10/16/ceos-csr-critics-lead-corprespons08-cx\\_tw\\_mk\\_kk\\_1016ceos.html](http://www.forbes.com/2008/10/16/ceos-csr-critics-lead-corprespons08-cx_tw_mk_kk_1016ceos.html).

<sup>345</sup> *Making Corporate Responsibility Work*, CEO FORUM, <http://www.ceoforum.com.au/article-detail.cfm?cid=6326&t=/Charlie-Baker-Starbucks-Coffee-Australia/Making-Corporate-Social-Responsibility-Work-Starbucks-Australias-Charlie-Baker> (last visited Feb. 9, 2015).

<sup>346</sup> Takanobu Ito, *Message from the President and CEO*, HONDA (June 2014), <http://world.honda.com/CSR/message>.

<sup>347</sup> ACCENTURE, THE UN GLOBAL COMPACT-ACCENTURE CEO STUDY ON SUSTAINABILITY 19 (2013), *available at* [http://www.accenture.com/Microsites/ungc-ceo-study/Documents/pdf/13-1739\\_UNGC%20report\\_Final\\_FSC3.pdf](http://www.accenture.com/Microsites/ungc-ceo-study/Documents/pdf/13-1739_UNGC%20report_Final_FSC3.pdf).

Moreover, Friedman's criticisms must be understood in their proper context. His concern was that businessmen were playing into the hands of socialism; Friedman admitted that corporate executives should pursue profit and "make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom."<sup>348</sup> This proposal would allow corporate executives to do just what Friedman acknowledged—follow the rules of society embodied in law and ethical customs free of fear of attack from those who claim they should make profits at the expense of all else. Friedman even admitted,

[I]t may well be in the long run interest of a corporation that is a major employer in a small community to devote resources to providing amenities to that community or to improving its government. That may make it easier to attract desirable employees, it may reduce the wage bill or lessen losses from pilferage and sabotage or have other worthwhile effects.<sup>349</sup>

In addition to this proposal being the right solution to increasing inequality, this proposal is also being suggested at the right time. Four macro level realities provide the political basis as to why this should be enacted in the United States now.

### *A. The Rise of Millennials*

The Millennial generation—achievement-oriented and optimistic—is more than 100 million strong.<sup>350</sup> This generation is already disrupting the way in which business is being done and

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<sup>348</sup> Friedman, *supra* note 33.

<sup>349</sup> *Id.* at 122.

<sup>350</sup> Neil Howe, *The Millennial Generation, "Keep Calm and Carry On" (Part 6 of 7)*, FORBES (Sept 4, 2014, 11:41 AM), <http://www.forbes.com/sites/neilhowe/2014/09/04/the-millennial-generation-keep-calm-and-carry-on-part-6-of-7/>.

fundamentally changing expectations for corporate activity across the spectrum, including manufacturing, wages, employment conditions, the environment, and sustainability. For instance, the 2013 Cone Social Impact Study showed that 89% of millennials are likely to switch to products that support social causes, assuming like price and value.<sup>351</sup> Unsurprisingly for this technologic savvy generation, 36% had researched corporate business practices and support for social causes within the last year.<sup>352</sup> Many millennials also emphasize a company's CSR record when making important decisions like employment (78%) and stock investment (64%).<sup>353</sup> Unlike their older counterparts, 64% of millennials reported that they used social media to engage with companies on social and environmental causes, and 26% used that medium to exchange negative information about corporate practices.<sup>354</sup>

A recent survey by Harris found that 55% of millennials consider a company's CSR reputation when making buying decisions.<sup>355</sup> A 4,000 respondent survey conducted by the Boston Consulting Group's found that half of millennials eighteen to twenty-four years old believed that brands "say something about who I am, my values, and where I fit in."<sup>356</sup> Further, just under half, 48%, of young millennials claim they "try to use brands of companies that are active in supporting social causes."<sup>357</sup>

According to a survey by ad agency network TBWA/Worldwide and TakePart, 73% of young Americans identify themselves as

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<sup>351</sup> CONE COMM'NS, 2013 CONE COMM'NS SOCIAL IMPACT STUDY 14 (2013), available at <http://www.conecomm.com/2013-social-impact>.

<sup>352</sup> *Id.* at 33.

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> *CSR Reputation Affects Purchase Decisions, Millennials Say*, MKTG. CHARTS (Aug. 26, 2014), <http://www.marketingcharts.com/traditional/csr-reputation-affects-purchase-decisions-millennials-say-45217>.

<sup>356</sup> CHRISTINE BARTON, LARA KASLOW, & CHRISTINE BEAUCHAMP, BOSTON CONSULTING GRP., *THE RECIPROCITY PRINCIPLE: HOW MILLENNIALS ARE CHANGING THE FACE OF MKTG. FOREVER* 7-9 (2014).

<sup>357</sup> *Id.* at 10.

“social activists.”<sup>358</sup> One in three boycotts or supports products or companies based on the causes they support, and 75% care about energy conservation.<sup>359</sup> Importantly, 80% would be willing to buy products and services from a company that shares support for their causes if prices and quality were equal.<sup>360</sup> 75% want companies to “create economic value for society by addressing its needs.”<sup>361</sup> Further, 75% would also think highly of companies that support social causes and seek employment in such firms.<sup>362</sup> Notably, the influence of millennials extends into their families: a survey by Resource Interactive showed that 88% of household clothing purchases are influenced by millennials.<sup>363</sup> A survey conducted by the Clinton Global Initiative and Microsoft in 2014 revealed that millennials claimed to be more focused on the environment than their older counterparts by a margin of 76% to 24%.<sup>364</sup> Accenture reports that 88% of Chinese millennials, compared with 66% of American millennials, want their favorite brands to lower the carbon footprint.<sup>365</sup> Of concern to companies, 66% of U.S. millennials, compared with 90% of Chinese and Indian millennials, believe it is their responsibility to communicate views publicly after a negative experience with a brand.<sup>366</sup> Another recent survey shows that 85% of

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<sup>358</sup> Mitch Nauffts, *The Future of Social Activism*, PHILANTHROPY NEWS DIGEST (Sept. 21, 2013), <http://pndblog.typepad.com/pndblog/2013/09/infographic-the-future-of-social-activism.html>.

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> *Id.*

<sup>363</sup> Deirdre van Dyk, *Who’s Holding the Handbag?*, TIME (Feb. 21, 2008), [http://content.time.com/time/specials/2007/article/0,28804,1714683\\_1714625\\_1714280,00.html](http://content.time.com/time/specials/2007/article/0,28804,1714683_1714625_1714280,00.html).

<sup>364</sup> *Digital Adoption in CSR Reporting*, METHODOLOGIE (May 27, 2014), <http://www.methodologie.com/csr-reporting-meets-the-digital-age>.

<sup>365</sup> *Engaging Tomorrow’s Consumers*, ACCENTURE (2013), <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-Engaging-Consumers-Infographic.pdf>.

<sup>366</sup> *Id.*

millennials reported that they bought a company's goods because of its commitment to social responsibility.<sup>367</sup>

Specific to this proposal, a survey conducted by the Harvard Public Opinion Project found that 64% of millennials surveyed believed that the gap in wealth had grown during their lifetimes.<sup>368</sup> Interestingly, 67% of respondents did not believe that the wealth gap was the result of inputs and choices made by the wealthy.<sup>369</sup> The 2014 Deloitte Millennial Survey found that 64% of millennials believed that companies had to do more to address inequality.<sup>370</sup> The survey also showed that 56% believed that government was having a negative impact in tackling the challenge of inequality.<sup>371</sup>

These are overwhelming numbers. Considering that 50% of the workforce in 2020 will be comprised of this generation,<sup>372</sup> the consequences of millennials' views for the business landscape becomes obvious. This proposal would bring the legal expectations of companies in line with one of the largest voting blocs in the country.

### *B. Consumer Expectations and Reputation*

The second macro trend is a shift in consumer expectations to demand more from companies. For instance, the 2013 Cone

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<sup>367</sup> Oliver Russell, *Survey Results Show Millennials Driving Corporate Responsibility*, TRIPLE PUNDIT (July 23, 2014), <http://www.triplepundit.com/podium/survey-results-show-millennials-driving-corporate-social-responsibility>.

<sup>368</sup> Richard He & Jacob Meisel, *Millennials Skeptical of Government's Ability to Combat Inequality*, HPRGUMENT POSTS (Apr. 29, 2014, 10:35 AM) <http://harvardpolitics.com/hprgument-posts/millennials-skeptical-governments-ability-combat-inequality/>.

<sup>369</sup> *Id.*

<sup>370</sup> DELOITTE, BIG DEMANDS AND HIGH EXPECTATIONS, THE DELOITTE MILLENNIAL SURVEY 2 (2014), <http://www2.deloitte.com/global/en/pages/about-deloitte/articles/2014-millennial-survey-positive-impact.html>.

<sup>371</sup> *Id.* at 3.

<sup>372</sup> PWC, MILLENNIALS AT WORK, RESHAPING THE WORKPLACE 3 (2011), available at <http://www.pwc.com/gx/en/managing-tomorrows-people/future-of-work/assets/reshaping-the-workplace.pdf>.

Communications Social Impact Study showed that a mere 7% of American consumers believed that the role of companies is limited to making profits,<sup>373</sup> a direct repudiation of Milton Friedman's views.<sup>374</sup> Over 90% believe that companies ought to play some role in supporting social or environmental causes.<sup>375</sup> 21% of the respondents believe that companies should change their operations to align with social and environmental needs.<sup>376</sup> 82% based their purchasing decisions<sup>377</sup> and 71% based their choice of employer on the company's support for a cause.<sup>378</sup> And, 88% said they would buy a product that generated a social or environmental benefit if given the opportunity and 54% reported that they had made such a purchase within the last 12 months.<sup>379</sup> Crucially, 88% said they would boycott a product if they were aware a company behaving irresponsibly produced it and 42% reported having done so within the last 12 months.<sup>380</sup>

We First, a marketing company, digested the results of several consumer surveys and found that 47% of global consumers typically purchase a product that supports a good cause at least once a month.<sup>381</sup> 90% would boycott a product if they were aware of the company's irresponsible practices; and a surprisingly high 53% would not invest in a stock if the company does not actively engage in CSR.<sup>382</sup>

Academic research also shows that ethical consumers are "concerned with the effects that a purchasing choice has, not only on

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<sup>373</sup> CONE COMM'NS, *supra* note 351, at 7.

<sup>374</sup> See Friedman, *supra* note 33.

<sup>375</sup> See CONE COMM'NS, *supra* note 351, at 7.

<sup>376</sup> *Id.*

<sup>377</sup> *Id.* at 13.

<sup>378</sup> *Id.* at 33.

<sup>379</sup> *Id.* at 19.

<sup>380</sup> *Id.*

<sup>381</sup> Simon Mainwaring, *Marketing 3.0: The Rise of Purpose-Driven Social Brands [Infographic]*, WE FIRST (2013), <http://simonmainwaring.com/future/marketing-3-0-the-rise-of-purpose-driven-social-brands-infographic/>.

<sup>382</sup> *Id.*

themselves, but also on the external world around them.”<sup>383</sup> One study found that about 30% of sampled consumers were favorably disposed to ethical consumption.<sup>384</sup> Studies have also shown that consumers who are aware of the ethical nature of a good are willing to pay a premium in contrast to a lower price for known unethical goods.<sup>385</sup> For instance, another study showed that consumers would pay 28% more for a \$10 ethical good and 15% more for a \$100 good.<sup>386</sup> Another study found that across a wide variety of goods, consumers were willing to pay over 10% extra on average for ethical options.<sup>387</sup> A Belgian study received similar results, concluding that the average consumer is willing to pay a 10% premium for a fair trade label.<sup>388</sup>

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<sup>383</sup> ROB HARRISON, TERRY NEWHOLM, & DEIRDRE SHAW, *THE ETHICAL CONSUMER 2* (Sage Publications, 2005); accord Andrew Crane, *Unpacking the Ethical Product*, 30 J. BUSINESS ETHICS 361, 361 (2001). Further, a study conducted by Elizabeth H. Creyer and William T. Ross indicates that consumers considered ethical practices when making purchases, expect ethical behavior, will pay higher prices for ethically produced goods, and, while they might purchase goods produced by an unethical producer, there is an expectation that these goods should be cheaper. Elizabeth H. Creyer & William T. Ross, *The Influence of Firm Behavior on Purchase Intention: Do Consumers Really Care About Business Ethics?*, 14 J. CONSUMER MKTG. 421, 428 (1997).

<sup>384</sup> Iris Vermeir & Wim Verbeke, *Sustainable Food Consumption: Exploring the Consumer “Attitude–Behavioral Intention” Gap*, 19 J. AGRIC. & ENVTL. ETHICS 169, 172-73 (2006).

<sup>385</sup> See Creyer & Ross, *supra* note 383, at 428. *But see* THE GUARDIAN, CONSUMER ATTITUDES AND PERCEPTIONS ON SUSTAINABILITY (2008), available at <http://image.guardian.co.uk/sys-files/Guardian/documents/2010/06/15/GSiJun2010.pdf>. This study indicates that environmental factors are important, but price, availability, and quality matter more to consumers. *Id.*

<sup>386</sup> Kimberly Ann Elliott, & Richard B. Freeman, *White Hats or Don Quixotes? Human Rights Vigilantes in the Global Economy*, NAT’L BUREAU OF ECON. RESEARCH 51 (2004).

<sup>387</sup> Peter J. McGoldrick & Oliver M. Freestone, *Ethical Product Premiums: Antecedents and Extent of Consumers’ Willingness to Pay*, 18 Int’l REV. RETAIL, DISTRIBUTION & CONSUMER RES. 185, 186 (2008).

<sup>388</sup> Patrick De Pelsmacker, Liesbeth Driesen, & Glenn Rayp, *Do Consumers Care About Ethics? Willingness to Pay For Fair-Trade Coffee*, 39 J. CONSUMER AFFAIRS 363, 363 (2005).

However, only 10% of the sample willingly accepted the current fair trade label price premium of 27%.<sup>389</sup> Similarly, 38% of respondents in a U.S. study were willing to pay a premium of 20%, on average, for products that came from a supply chain they perceived as ethical.<sup>390</sup> The implications are simple: consumers want to buy from companies that contribute to social causes and are willing to pay more for such products.

### *C. Sustainable Investing*

The third macro trend supporting our case for mandatory CSR is the growth of sustainable investing. Businesses are embracing sustainable investing and U.S. laws should facilitate this pursuit.

Evidence indicates that major market actors are embracing sustainability. The 2014 Ernst & Young Proxy Report noted that investors are asking companies “to report on their suppliers’ sustainability performance or to require significant suppliers to issue sustainability reports . . . [and] report on risk assessments that identify and analyze potential and actual human rights risks of company and supply chain operations.”<sup>391</sup> The 2014 proxy season yielded a record 417 sustainability-related shareholder resolutions.<sup>392</sup> Indeed, the goal

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<sup>389</sup> *Id.*

<sup>390</sup> Jason E. Taylor & Vigdis Boasson, *Who Buys Fair Trade and Why (or Why Not)? A Random Survey of Households*, 48 J. CONSUMER AFFAIRS 418, 418 (2014).

<sup>391</sup> EY CENTER FOR BOARD MATTERS, LET’S TALK: GOVERNANCE, 2014 PROXY SEASON PREVIEW 3 (2014), available at [http://www.ey.com/Publication/vwLUAssets/EY-2014-proxy-season-preview/\\$FILE/EY-Proxy-Season-2014-preview.pdf](http://www.ey.com/Publication/vwLUAssets/EY-2014-proxy-season-preview/$FILE/EY-Proxy-Season-2014-preview.pdf). (“Many investors continue to show strong attention to environmental sustainability and human rights and labor conditions, including across a company’s global supply chain. Requests for enhanced disclosure, monitoring and management of these sustainability-related risks are growing compared to prior years.”).

<sup>392</sup> Andrew Behar, *Record Number of Sustainability-Related Shareholder Resolutions Filed in 2014*, CSR REPORTING, (June 25, 2014), <http://www.csrreporting.com/record-number-of-sustainability-related-shareholder-resolutions-filed-in-2014-2/>.

of sustainability is not just a phenomenon in the United States. Even in China, more than 1,700 companies filed CSR reports in 2012.<sup>393</sup>

Moreover, companies are investing in related capacity-building efforts. For example, the Carlyle Group employs a Chief Sustainability Officer to administer a sustainability strategy for the firm.<sup>394</sup> Morgan Stanley created the Institute for Sustainable Investing with the target of raising \$10 billion.<sup>395</sup> Goldman Sachs has a \$250 million “GS Social Impact Fund.” These are not isolated instances. The UN Principles for Responsible Investment contain six principles and claim 1,325 signatories with \$45 trillion worth of assets under investment.<sup>396</sup> According to the U.S. SIF Foundation, “\$6.57 trillion in total assets is under management at the end of 2013 using one or more sustainable, responsible, and impact investing strategies.”<sup>397</sup> This represented more than one in every six dollars under professional management.<sup>398</sup>

Further recent research shows that companies that invest in sustainability “significantly outperform their counterparts over the long term, both in terms of stock market as well as accounting performance.”<sup>399</sup> Other research shows that companies engaging in

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<sup>393</sup> Christina Larson, “Corporate Social Responsibility” Reports in China: Progress or Greenwashing?, GLOBAL ECON. (Dec. 12, 2013), <http://www.businessweek.com/articles/2013-12-12/corporate-social-responsibility-reports-in-china-progress-or-greenwashing>.

<sup>394</sup> Press Release, The Carlyle Group, The Carlyle Group Names Jackie Roberts Chief Sustainability Officer (Feb. 13, 2014), available at <http://www.carlyle.com/news-room/news-release-archive/carlyle-group-names-jackie-roberts-chief-sustainability-officer>.

<sup>395</sup> MORGAN STANLEY, 2013 SUSTAINABILITY REP. 7 (2013), available at [http://www.morganstanley.com/globalcitizen/pdf/2013\\_MS\\_Sustainability\\_REPOR T.pdf](http://www.morganstanley.com/globalcitizen/pdf/2013_MS_Sustainability_REPOR T.pdf).

<sup>396</sup> *About the PRI Initiative*, PRI: PRINCIPLES FOR RESPONSIBLE INV., <http://www.unpri.org/about-pri/about-pri/> (last visited Feb. 25, 2015).

<sup>397</sup> See *SRI Basics*, US SIF: THE FORUM FOR SUSTAINABLE AND RESPONSIBLE INVESTMENT, <http://www.ussif.org/sribasics> (last visited Feb. 25, 2015).

<sup>398</sup> *Id.*

<sup>399</sup> Robert G. Eccles, et al., *The Impact of a Corporate Culture of Sustainability on Corporate Behavior and Performance* 1 (Harv. Bus. Sch., Working Paper No. 12-035, 2012).

CSR exhibit positive financial performance.<sup>400</sup> Further, a meta-analysis of several studies indicates a positive association between CSR and firm financial performance over several decades.<sup>401</sup>

#### *D. The Pursuit of Esteem and Reputation*

Many corporate leaders are motivated by reputation. Recent research provides empirical support for the proposition that “humans pursue status as an end in itself across cultures.”<sup>402</sup> Indeed, this desire for status and admiration is at the root of much philanthropic activity. Studies show that individuals are likely to make donations in situations where those donations are visible rather than anonymous.<sup>403</sup>

Equally, the pursuit of social status generates competitive tendencies in individuals as they seek to differentiate themselves from others. For instance, one study of auction bidding showed that “the extent to which participants overbid in a competitive environment is related to two independent measures of drive for social status.”<sup>404</sup> The study showed that “overbidding is increased when the task includes members of a rival out-group, suggesting that social identity is an important mediator of competitiveness.”<sup>405</sup>

Research shows that consumers’ perceptions of a company’s CSR activities inform their decisions regarding a particular company’s products. Consumer judgements about the quality of a

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<sup>400</sup> PHILIP KOTLER & NANCY LEE, *CORPORATE SOCIAL RESPONSIBILITY: DOING THE MOST GOOD FOR YOUR COMPANY AND YOUR CAUSE* 10-18 (2005).

<sup>401</sup> Marc Orlitzky, Frank L. Schmidt, & Sara L. Rynes, *Corporate Social and Financial Performance: a Meta-Analysis*, 24 *ORGANIZATIONAL STUDIES* 403, 403 (2003).

<sup>402</sup> Bernardo A. Huberman, Christoph H. Loch, & Ayse Öngüler, *Status as a Valued Resource*, 67 *SOC. PSYCHOL. Q.* 103, 112 (2004).

<sup>403</sup> Nicola Lacetera & Mario Macis, *Social Image Concerns and Prosocial Behavior: Field Evidence From a Nonlinear Incentive Scheme*, 76 *J. ECON. BEHAV. & ORG.* 225, 236-37 (2010).

<sup>404</sup> Wouter van den Bos, Philipp J.M. Golka, David Effelsberg, & Samuel M. McClure, *Pyrrhic Victories: The Need for Social Status Drives Costly Competitive Behavior*, 7 *FRONTIERS IN NEUROSCIENCE* 1, 8 (2013).

<sup>405</sup> *Id.* at 1.

brand or product might not relate strictly to its quality attributes but rather derive a halo effect from perceptions about the company's CSR reputation. These effects might translate into positive or negative judgements about new products manufactured by a company based on aforementioned reputations.<sup>406</sup>

A study conducted by the Reputation Institute shows that consumers make choices about the goods they want to buy, the employer they want to work for, and the stock they wish to invest in based mostly on their perception of the company's reputation.<sup>407</sup> Specifically, 60% of consumers' decisions were influenced by reputation; the actual product itself influenced only 40% of decisions.<sup>408</sup> Importantly, 41% of consumers reported that a company's CSR record influenced their perception of that company.<sup>409</sup> On the other side of the equation, the Accenture-UN Global Compact study showed that 81% of CEOs believed that consumers' purchasing decisions were influenced by the sustainability reputations of their companies.<sup>410</sup>

These insights have important implications for this proposal. First, a legal mandate to engage in CSR and disclose activity publicly will facilitate the separation of true reputation, and it will generate incentives for companies to engage in bona fide CSR.<sup>411</sup> Armed with a legal mandate and sanctions, companies will be conscious of the impact of their CSR activity; fake CSR signals will be detected and

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<sup>406</sup> See Jill Klein & Niraj Dawar, *Corporate Social Responsibility and Consumers' Attributions and Brand Evaluations in a Product-Harm Crisis*, 21 INT'L J. RES. MKTG. 203, 203 (2004).

<sup>407</sup> Jacquelyn Smith, *The Companies with the Best CSR Reputations*, FORBES (Oct. 2, 2013, 11:59 PM), <http://www.forbes.com/sites/jacquelynsmith/2013/10/02/the-companies-with-the-best-csr-reputations-2/>.

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*

<sup>410</sup> See UN Global Compact, *Accenture CEO Study on Sustainability Infographic*, *supra* note 342.

<sup>411</sup> See generally Frances Bowen & J. Alberto Aragon-Correa, *Greenwashing in Corporate Environmentalism Research and Practice: The Importance of What We Say and Do*, 27 ORG. ENV'T. 107 (2014).

punished via legal and non-legal sanctions. Second, the legislation will generate incentives for competition between firms on CSR spending and, if the evidence from the studies about outbidding rivals is indicative, it will likely increase social welfare caused by an increase in competitive spending on pro-social activities.

This proposal might reduce the number of companies previously contributing more than 1% of their net annual profits. This may occur because of a phenomenon called signal-extraction problem.<sup>412</sup> Because most companies would engage in CSR activity of some sort because of the legal mandate, the social meaning of CSR changes: it is not seen by the market as a clear separation signal evidencing a commitment to pro-social causes by the company.<sup>413</sup> Companies that engage in sincere and more costly CSR are unable to derive the reputational benefits and then may reduce such activities to only meet bare compliance.

However, recent experimental evidence shows that the existence of material incentives has the effect of increasing pro-social activity. A recent study examined a large field study of blood donations organized by the American Red Cross and found that offering incentives increased turnout and the amount of units of blood collected.<sup>414</sup> Moreover, this effect increased with the value of the incentive offered and was robust even when the incentive had no symbolic value.<sup>415</sup>

This has implications for our design of CSR legislation. If incentives increase pro-social activity rather than decrease it, creating a legislative requirement for CSR spending and mandating disclosure is unlikely to reduce spending below the legal threshold for those companies currently spending above this limit. For other companies that currently do not spend on CSR or spend below the legal limit, a

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<sup>412</sup> Roland Benabou & Jean Tirole, *Incentives and Prosocial Behavior*, 96 AM. ECON. REV. 1652, 1654 (2006).

<sup>413</sup> *Id.*

<sup>414</sup> Nicola Lacetera, Mario Macis & Robert Slonim, *Will There Be Blood? Incentives and Displacement Effects in Pro-social Behavior*, 4 AM. ECON. J. ECON. POLICY 186, 219-22 (2012).

<sup>415</sup> *Id.*

legislative requirement creates incentives for compliance. Creating incentives for compliance is likely to increase the total number of companies participating in CSR and the amount of money actually spent on CSR. Even for companies currently participating in CSR, legislative requirements create incentives to compete with other companies in order to establish a reputation for being best in class. Moreover, the disclosure requirement ensures the clarity of the information provided to the market and makes the reporting of false claims about CSR activity costly.

In addition, disclosure requirements are likely to have secondary consequences such as allowing information intermediaries, NGOs, and others to reward or shame corporations as appropriate. For instance, based on the disclosed information, NGOs or other actors might offer awards for CSR performance or publish shaming lists featuring companies that are not in compliance with legislative requirements. Both rewarding and shaming incentivizes companies.<sup>416</sup> Further, research shows that companies respond positively to corporate environmental ratings.<sup>417</sup> In sum, this research indicates that this proposal will only motivate companies to engage more deeply with CSR.

## CONCLUSION

Inequality is accelerating toward dangerous levels. Aside from the harmful economic consequences at both individual and systemic levels, inequality poses serious threats to social cohesion by engendering conflict. This is demonstrated by survey evidence indicating that Americans' views as to the acceptable level of inequality contrasts starkly with the actual level of inequality in

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<sup>416</sup> Susan Neckerman & Bruno Frey, *Awards as Incentives* (Inst. for Empirical Research in Econ., Working Paper No. 334, 2008), available at <http://ssrn.com/abstract=1021208>.

<sup>417</sup> Aaron K. Chatterji & Michael W. Toffel, *How Firms Respond to Being Rated*, 31 STRAT. MGMT. J. 917, 933-36 (2010).

contemporary society.<sup>418</sup> Inequality also has the potential to adversely affect the political process and corrode institutions as those people without power lose trust in societal institutions.

As documented above, corporate profits have soared to historic levels.<sup>419</sup> U.S. corporations have a central role to play in ameliorating inequality by generating shared value for all members of society. Corporate CEOs have admitted as much and have expressed their desire to work with the government to tackle social problems. Society members, specifically millennials, are now expecting more from companies.<sup>420</sup>

Thus, we propose mandating a 1% CSR spend by firms, similar to the innovative law adopted by India. India shares the inequality problems currently faced by the U.S., but since its passage, Indian corporations have supported the CSR mandate included in this innovative law.

This proposal delivers desirable outcomes, benefits from a superior and more motivated talent pool, and accords with the stated career goals of corporate workers. If adopted, this proposal has the potential to transform the role of U.S. corporations in society. The infusion of funding triggered by a 1% mandatory CSR spend could usher in a host of social innovation and enterprise, generate jobs, reduce inequality, foster engagement, and ultimately deliver invaluable social and economic benefits.

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<sup>418</sup> See LANGER RESEARCH ASSOCIATES, *THE OPPORTUNITY SURVEY: UNDERSTANDING THE ROOTS OF ATTITUDES ON INEQUALITY* (2015), available at [http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/The%20Opportunity\\_Survey\\_Report.pdf](http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/The%20Opportunity_Survey_Report.pdf).

<sup>419</sup> See Robert Lenzner, *Corporate Profits are at an All-Time Record Peak and Expected to Grow in 2014*, FORBES (Nov. 30, 2013, 1:35 PM), <http://www.forbes.com/sites/robertlenzner/2013/11/30/there-are-far-fewer-bears-on-the-stock-market-today-than-at-the-peaks-in-2000-or-2007/>.

<sup>420</sup> *The Millennial Generation Research Review*, U.S. CHAMBER OF COMMERCE FOUND., <http://www.uschamberfoundation.org/millennial-generation-research-review> (last visited Feb. 29, 2015).

## APPENDIX

Table 1: Top Fifty Companies, as of August 23, 2014<sup>421</sup>

	<b>Company name</b>
1.	Jindal Steel & Power Limited
2.	GAIL India Limited
3.	United Spirits
4.	SESA Sterlite Limited (Formerly called SESA Goa Ltd.)
5.	Ambuja Cements
6.	Tata Motors
7.	Tata Power
8.	Larsen & Tubro
9.	Oil & Natural Gas Corporation (ONGC)
10.	ACC Limited
11.	Grasim Industries
12.	ICICI Bank
13.	Cipla

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<sup>421</sup> *Nifty*, *supra* note 256.

14	HDFC Bank
15	IndusInd Bank
16	Bharat Petroleum (BPCL)
17	Lupin
18	Bharat Heavy Electricals (BHEL)
19	Sun Pharma
20	NTPC Limited
21	Tata Steel
22	Reliance Industries Limited (RIL)
23	Cairn India
24	Axis Bank
25	DLF
26	IDFC
27	Coal India Limited
28	Ultratech Cem
29	Power Grid Corporation of India Limited
30	Maruti Suzuki

3	Dr. Reddy's Labs
3	Mahindra & Mahindra Limited
3	Punjab National Bank
3	Bank of Baroda
3	Asian Paints
3	NMDC Limited
3	Tech Mahindra
3	Infosys
3	Tata Consultancy Services
4	ITC
4	State Bank of India
4	Kotak Bank
4	Hind Unilever
4	Bajaj Auto
4	Wipro
4	Hindalco Industries
4	Bharti Airtel

48	HCL Tech
49	HDFC
50	Hero Motor

Table 2: CSR spend disclosures of companies in the sample

	<b>Company</b>	<b>Percentage of the profit after tax spent on CSR in the financial year ending 2014</b>	<b>Percentage of the profit after tax spent on CSR in the financial year ending 2013</b>
1.	Tata Power	1.6 <sup>422</sup>	-
2.	Larsen & Tubro	1.4 <sup>423</sup>	1.49 <sup>424</sup>
3.	ACC Limited	2.34 <sup>425</sup>	-
4.	Grasim	1.07 <sup>426</sup>	2.13 <sup>427</sup>

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<sup>422</sup> TATA POWER, *supra* note 290, at 2.

<sup>423</sup> LARSEN & TUBRO, *supra* note 290, at 19.

<sup>424</sup> LARSEN & TUBRO, 68<sup>TH</sup> ANNUAL REP. 2012-2013 23 (2013), available at [http://investors.larsentubro.com/upload/AnnualRep/FY2013AnnualRepL&T\\_Annual\\_Report\\_2012-13.pdf](http://investors.larsentubro.com/upload/AnnualRep/FY2013AnnualRepL&T_Annual_Report_2012-13.pdf).

<sup>425</sup> ACC LIMITED, *supra* note 290, at 43, 98.

<sup>426</sup> GRASIM, *supra* note 290, at 59.

<sup>427</sup> GRASIM, ANNUAL REP. 2012-2013 57 (2013), available at [http://www.grasim.com/investors/downloads/Grasim\\_Annual\\_Report\\_2012-13.pdf](http://www.grasim.com/investors/downloads/Grasim_Annual_Report_2012-13.pdf).

5.	Lupin	0.62 <sup>428</sup>	0.74 <sup>429</sup>
6.	Tata Steel	3.31 <sup>430</sup>	3.37 <sup>431</sup>
7.	Reliance Industries Limited (RIL)	0.32 <sup>432</sup>	1.7 <sup>433</sup>
8.	Cairn India	0.38 <sup>434</sup>	0.17 <sup>435</sup>
9.	Axis Bank	1 <sup>436</sup>	0.82 <sup>437</sup>
10.	IDFC	1.7 <sup>438</sup>	-
11.	Ultratech Cement	2.24 <sup>439</sup>	2.63 <sup>440</sup>
12.	Punjab National Bank	0.09 <sup>441</sup>	-

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<sup>428</sup> LUPIN, *supra* note 291, at 79.

<sup>429</sup> LUPIN, ANNUAL REP. 2013 85 (2013), *available at* <http://www.lupinworld.com/pdf/2013/new/The%20Lupin%20Annual%20Report,%20FY2012-13a.pdf>.

<sup>430</sup> TATA STEEL, *supra* note 291, at 121.

<sup>431</sup> TATA STEEL, *supra* note 298, at 101.

<sup>432</sup> RELIANCE INDUS. LTD., *supra* note 290, at 88.

<sup>433</sup> RELIANCE INDUS. LTD., ANNUAL REP. 2012-2013 103 (2013), *available at* [http://www.moneycontrol.com/bse\\_annualreports/5003250313.pdf](http://www.moneycontrol.com/bse_annualreports/5003250313.pdf).

<sup>434</sup> CAIRN INDIA, *supra* note 290, at 100.

<sup>435</sup> CAIRN INDIA, ANNUAL REP. 2012-2013 86 (2013), *available at* [https://www.cairnindia.com/sites/default/files/annual\\_reports/fullar201213.pdf](https://www.cairnindia.com/sites/default/files/annual_reports/fullar201213.pdf).

<sup>436</sup> AXIS BANK, *supra* note 290, at 28.

<sup>437</sup> AXIS BANK, ANNUAL REP. 2012-13 155 (2013), *available at* <http://www.axisbank.com/download/Annual-Report-2013.pdf>.

<sup>438</sup> IDFC, *supra* note 290, at 65.

<sup>439</sup> ULTRATECH CEMENT LTD., *supra* note 299, at 39.

<sup>440</sup> ULTRATECH CEMENT LTD., *supra* note 290, at 42.

<sup>441</sup> PUNJAB NAT'L BANK, *supra* note 290, at 68.

13.	Bank of Baroda	0.33 <sup>442</sup>	-
14.	Asian Paints	0.32 <sup>443</sup>	-
15.	Tech Mahindra	1.5 <sup>444</sup>	-
16.	Tata Consultancy Services	0.48 <sup>445</sup>	-
17.	State Bank of India	1.37 <sup>446</sup>	-
18.	Kotak Bank	0.24 <sup>447</sup>	-
19.	Hind Unilever	2 <sup>448</sup>	-
20.	Hindalco	1.81 <sup>449</sup>	1.48 <sup>450</sup>
21.	Bharti Airtel	0.61 <sup>451</sup>	0.58 <sup>452</sup>
22.	Hero Motor	0.06 <sup>453</sup>	0.06 <sup>454</sup>

<sup>442</sup> BANK OF BARODA, *supra* note 290, at 146.

<sup>443</sup> ASIAN PAINTS, *supra* note 290, at 152.

<sup>444</sup> TECH MAHINDRA, *supra* note 290, at 9.

<sup>445</sup> TATA CONSULTANCY SERVS., *supra* note 290, at 86.

<sup>446</sup> STATE BANK OF INDIA, *supra* note 290, at 71.

<sup>447</sup> KOTAK BANK, *supra* note 290, at 122.

<sup>448</sup> HINDUSTAN UNILEVER LTD., BUSINESS RESPONSIBILITY REP. 2013-14 4 (2014), available at [http://www.hul.co.in/Images/BRR-2013-14\\_tcm114-364167.pdf](http://www.hul.co.in/Images/BRR-2013-14_tcm114-364167.pdf).

<sup>449</sup> HINDALCO, *supra* note 290, at 67.

<sup>450</sup> HINDALCO, ANNUAL REP. 2012-2013 49 (2013), available at [http://www.hindalco.com/portals/0/documents/investors/downloads/Hindalco\\_Annual\\_Report\\_2012-13.pdf](http://www.hindalco.com/portals/0/documents/investors/downloads/Hindalco_Annual_Report_2012-13.pdf).

<sup>451</sup> BHARTI AIRTEL, *supra* note 290, at 34.

<sup>452</sup> BHARTI AIRTEL, ANNUAL REP. 2012-2013 27 (2013), available at <http://www.airtel.in/wps/wcm/connect/f5443281-e006-4f29-938d-46a4fc2ea67c/Annual-Report-of-Bharti-Airtel-for-FY-2012-2013.pdf?MOD=AJPERES>.

23.	Cipla	0.7 <sup>455</sup>	0.51 <sup>456</sup>
24.	Wipro	19.07 <sup>457</sup>	17.86 <sup>458</sup>
25.	IndusInd Bank	0.90 <sup>459</sup>	0.86 <sup>460</sup>
26.	Dr. Reddy's	1.03 <sup>461</sup>	1.33 <sup>462</sup>
27.	SESA Sterlite	1.40 <sup>463</sup>	1 <sup>464</sup>
28.	Ambuja Cements	2.56 <sup>465</sup>	4.06 <sup>466</sup>

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<sup>453</sup> HERO, *supra* note 291, at 91.

<sup>454</sup> HERO, *supra* note 298, at 90.

<sup>455</sup> CIPLA, BUS. RESPONSIBILITY REP. 2013-2014 2 (2014), *available at* [http://www.cipla.com/CiplaSite/Media/PDF/Business\\_Responsibility\\_Report\\_2013\\_14.pdf](http://www.cipla.com/CiplaSite/Media/PDF/Business_Responsibility_Report_2013_14.pdf).

<sup>456</sup> CIPLA, BUS. RESPONSIBILITY REP. 2012-2013 2 (2013), *available at* [http://www.cipla.com/CiplaSite/Media/PDF/Sustainability/CIPLA\\_Business\\_Responsibility\\_Report\\_2012\\_13.pdf](http://www.cipla.com/CiplaSite/Media/PDF/Sustainability/CIPLA_Business_Responsibility_Report_2012_13.pdf).

<sup>457</sup> WIPRO, *supra* note 290, at 103 and 146.

<sup>458</sup> WIPRO, *supra* note 302, at 102 and 147.

<sup>459</sup> INDUSIND BANK, *supra* note 290, at 18.

<sup>460</sup> INDUSIND BANK, ANNUAL REP. 2012-2013 123 (2013), *available at* [http://www.indusind.com/content/dam/indusind/AnnualReports/2012-13/2012-13/IndusInd%20Bank%20AR\\_2012-13.pdf](http://www.indusind.com/content/dam/indusind/AnnualReports/2012-13/2012-13/IndusInd%20Bank%20AR_2012-13.pdf).

<sup>461</sup> DR. REDDY'S, *supra* note 290, at 35.

<sup>462</sup> DR REDDY, ANNUAL REP. 2012-2013 18 (2013), *available at* <http://www.drreddys.com/investors/pdf/annualreport2013.pdf>.

<sup>463</sup> SESA STERLITE, *supra* note 290, at 103 and 51.

<sup>464</sup> SESA STERLITE, ANNUAL REP. 2012-2013 50 (2013), *available at* [http://www.sesasterlite.com/media/38615/sesa\\_annual\\_report\\_fy2013.pdf](http://www.sesasterlite.com/media/38615/sesa_annual_report_fy2013.pdf).

<sup>465</sup> AMBUJA CEMENTS, *supra* note 290, at 70.

<sup>466</sup> AMBUJA CEMENTS, ANNUAL REP. 2013 56 (2013), *available at* [http://www.ambujacement.com/wp-content/uploads/Ambuja%20Cement%20Annual%20Report\\_2013.pdf\\_0.pdf](http://www.ambujacement.com/wp-content/uploads/Ambuja%20Cement%20Annual%20Report_2013.pdf_0.pdf).

<b>Average CSR spend as % of profits after tax of the above 28 companies</b>	<b>1.80</b>	
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