A Study on the Provisions of Companies Act 2013 Related to Corporate Social Responsibility of Pharmaceuticals Companies Listed in Bombay Stock Exchange

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Abstract: Any business organisation is a part of the society and it operates within a society and for the benefit of a society as a whole. Its main objective is to earn profit but this cannot be fulfilled without the contribution from the society itself. Therefore, businesses who are accumulators of wealth in any economy are not only responsible towards their direct stakeholders only but also to the common people and environment as a whole. In light of this fact, this paper tries to explore brief history of Corporate Social Responsibility (CSR) in India by focussing on the current development in such practices by basically focussing on the period after 2010. It also studies the activities undertaken by selected pharmaceutical companies and their compliance to the provisions of Companies Act 2013 in that regard. The CSR practices adopted by a total of thirty five pharmaceutical companies selected on the basis of their net profit, listed on BSE has been analysed and it was found that 1.58 percent of the average profits of the three years have been invested in CSR projects as against the required 2 percent.

Keywords: Bombay stock exchange, Companies Act 2013, Corporate Social Responsibility (CSR), Pharmaceutical company, Stakeholders.

I. Introduction

We often come across lines like 'India is a poor country but Indians are not' or in the words of a Swiss bank director who states that Indians are poor but India is not a poor country. Both of these sayings reflect an inherent and ever increasing truth about the country that points towards the disparities in socio-economic status of the citizens of the country. The focus of the government in many five year plans has been on inclusive growth of the country where the disparities in income can be reduced and there comes a shift in the concentration of resources from the rich to the poor. Analysing the importance of Corporate Social Responsibility is therefore, a very important consideration in this respect.

Corporate Social Responsibility (CSR) is a new, but very familiar concept for the businesses in India. A business organisation works in a society and therefore has a moral obligation towards it. Financial reporting or providing information about the position of business to the stakeholders is not enough, there is a growing need for them to be a catalyst of change in the society. Indian economy is riddled with problems related to poverty, education, health, unemployment etc. All these problems cannot be solved by the efforts of the government alone; businesses have to play a key role in that.

Many terms have been used to describe CSR like triple bottom line, corporate citizenship, philanthropy, strategic philanthropy, shared value, corporate sustainability etc. (Handbook on CSR in India pp-07). But CSR is a composite term and it includes some elements of all these terms.

Many have defined CSR in different ways. Carroll and Buchholtz, 2003 have defined it as-*economic, legal, ethical and discretionary expectations that society has of organisations at a given point of time*. The European Commissiondefines CSR as "*the responsibility of enterprises for their impacts on society"*. The ISO Strategic Group on Social Responsibility (SAG) defines CSR as an activity that "*is taken to mean a balanced approach for organizations to address economic, social and environmental issues in a way that aims to benefit people, communities and society*."

We can see from the above definitions that CSR basically encompasses the responsibility that the business organisations have towards the society. A business functions within a society and it affects the people and environment in many different ways and it is also affected equally by them in numerous ways. This started with the concept of charity and philanthropy but now has become a strategic business process necessitated by the expectations of people from the business organisations.

The different stakeholders who are directly and indirectly affected by the activities of a business organisation have some expectations from it and they must respond to it properly since it has become a necessity for their own survival.

After the insertion of the National voluntary guidelines by the Ministry of Corporate Affairs in 2011 and with the addition of provisions in the Companies Act 2013 which requires companies to adopt CSR policies and report it in the annual report; a framework has been created for the companies to formally become more responsible towards the society.

In light of this achievement, this paper highlights the developments brought about in CSR practices in Indian context as well as looks into the policies followed by top thirty five pharmaceuticals companies listed in Bombay Stock Exchange. The paper is divided in four parts. It starts with a brief introduction about the evolution of CSR practices in India, the second section looks into the various provisions of Companies Act 2013 relating to it, the third section provides information on the purpose and objectives of the paper and the methodology adopted, next section focuses on the analysis and the last section gives the findings and conclusion and clues for future research.

II. History of CSR in India

As commented by many authors, in India the idea of businesses being responsible for society is not a relatively new concept but it is only a shift from the concept of charity or philanthropy. For understanding the history of the concept of CSR in India we can refer to the work of Pushpa Sundar, where she has divided the evolution of the concept in India into four different stages. One more phase has been added here which starts around 2010. We can refer to Fig. 1 for understanding the different stages:

If we consider the period before 1800, charities and philanthropical activities were common and the rich and wealthy traders and businessmen used to make donations mainly towards religious purposes. In Indian context the concept of donation is rooted in tradition. The various religions like Hinduism, Sikhism, Islam have the concept of giving aid to the poor and needy by those who possess the resources. In Hinduism there is the concept of 'daana' which means a donation, which must be made by the rich to the poor. In Atharva Veda one of the ancient Indian book, it has been mentioned that one should donate ten times of what he earns.

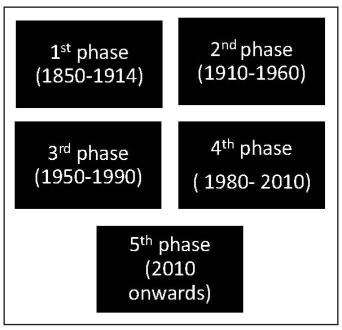

Fig. 1: Phases of Evolution of Corporate Social Responsibility in India

Therefore, giving a part to the society is not a recent phenomenon for Indians but the formal concept came into place when the British colonial rule started in the Indian Subcontinent.

A. 1st Phase (1850-1914)

As mentioned by Sundar (2000) the first phase of CSR started around 1850 and during this phase shifts happened towards a more formal western or more secular type of philanthropy. Various trusts were set up where the underprivileged, backward, minorities were the target groups. Many prominent businessess communities realised the importance of donations and set up many schools, colleges, hospitals, orphanages etc. The contributions of leading business families during this phase can't be forgotten.

B. 2nd Phase (1910-1960)

The second phase, as a result of many political donations and contributions made for the freedom struggle and increased level of 'giving' specially targeted towards untouchables, women empowerment and rural development, was termed as a golden period of business philanthropy. There was a considerable influence of Gandhian Theory of 'trusteeship' where the thrust was on business organisations to be the trustees of their wealth and that they should donate as much for social causes (Sundar, 2000). Later half of this phase saw the emergence of many scientific and technical research institutions. Many institutes for research for other purposes also opened as a result of the efforts of many private organisations.

C. 3rd Phase (1950-1990)

The first half of the third phase cannot be termed as a favourable period for societal contributions of the business inspite of the fact that many institutions were nationalised at that time in order to remove the inequality in the distribution of income. In reality, due to the increase in corruption in the governmental agencies and more regulations levied by the same, it saw existence of increased disparity in income distributions. Increase in the governmental regulations and taxes prompted businesses to focus more on investing money for charitable purposes only as a means to tax planning and not as a contribution being made towards the society (Sundar, 2000).

The situation only became better during 1970s where increased awareness was created as a result of many seminars and workshops, which placed the importance on various responsibilities that businesses had towards the society. The businesses felt that the need to invest more resources for social welfare purposes, not only as an obligation but for the very survival of the business. This was also a result of the increasing distrust of the people for businesses which they believed were accumulating all the economic surplus and that they must give something back to the society (Sundar, 2000).

Birla Institute for Scientific Research, Birla Institute of Technology and Science, Tata Institute of Social Science, Tata Institute for Fundamental Research are some of the few instituions that can be named here. With effect from 19th July 1969, 14 largest commercial banks in india were nationalised, containing 85% of bank deposits in the country. Six more banks were nationalised in 1980.

D. 4th Phase (1980-2010)

In light of economic liberalisation which opened up the country to new avenues of competition and open corporate sector, Indian businesses gradually started facing global competition. This led to increased competitiveness resulting in increased profit and enhanced willingness of corporates in giving back what they owe to the society. Fourth phase was termed as a phase of corporate citizenship and in the words of Sundar the focus of businesses "*moved away from charity and traditional philanthropy towards more direct engagement in mainstream development concerns and in helping disadvantaged groups in the society"*. The phase also saw new dynamics of collaborations between Non-Governmental Organisations (NGOs) and government. Buisness organisations also relied to a major extent on the NGOs and many contributions were made indirectly to the welfare activities of the society through these organisations (Sundar, 2000).

E. 5th Phase (2010 onwards)

This phase has been characterised by introduction of formal provisions and guidelines so that the businesses are more responsible towards the society. The National Voluntary Guidelines were issued by Ministry of Corporte Affairs, Government of India on July 2011 and released by Mr. Murli Deora, former minister for Corporate Affairs. After taking due consideration of the expectations of different stakeholders, the guidelines presents the fundamental requirements for the businesses to be more responsible towards the society. The guidelines are applicable to all businesses, be it national or multinational, big or small, operating in India. The concept of 'triple bottom line' approach has been identified and the businesses are asked to endorse and embrace it**.**

The phrase "the triple bottom line" was first coined in 1994 by John Elkington, the founder of a British consultancy called Sustainability. His argument was that companies should be preparing three different (and quite separate) bottom lines. One is the traditional measure of corporate profit - the "bottom line" of the profit and loss account. The second is the bottom line of a company's "people account" - a measure in some shape or form of how socially responsible an organisation has been throughout its operations. The third is the bottom line of the company's "planet" account - a measure of how environmentally responsible it has been (http://www.economist.com/node/14301663).

The guidelines are expressed in the form of nine principles that all the businesses are supposed to be bound by. The concept of Business Responsibility Reporting will ensure the adoption of the stated principles. To give guidance to those who are not sure on how to report properly, suggested framework has also been presented.

The extension to this step is the adoption of the system of Business Responsibilty Reporting by the Securities and Exchange Board of India (SEBI). SEBI issued a circular on the said reports on 13th August 2012. These reporting practices are to be followed by the top 100 listed entities based on market capitalisation at BSE and NSE on 31st March of a financial year. As on February 2017 this mandate has been extended to top 500 listed entities under SEBI Listing Obligations and Disclosure Requirements.

Clause 55 has also been inserted about making some disclosures and also reporting the business responsibiltiy practices by the companies. These reports have to be prepared mandatorily as a part of the annual reports of the companies. The detailed suggested framework for such reporting have also been given in the circular. Above requirements will form a part of the listing agreement of the stock exchanges.

Companies Act 2013 which replaced the previous act has been a forward step for the social responsibility aspect of the business where section 135 has been inserted which specifically deals with CSR.

III. Companies Act 2013 on CSR

Companies Act 2013 has laid down various provisions for the companies who have to adopt various CSR practices. Under section 135 of the Act the companies having net worth of five hundred crores or more or turnover of one thousand crores or more or net profit of five crores or more shall constitute a corporate social responsibility committee. The committee will be constituted by the Board of Directors (BOD) out of which one must be an independent director. It shall have the responsibility of formulating and recommending to the board of directors, various CSR policies to be undertaken in respect of various activities as specified in Schedule VII of the Act. Apart from this, the committee will also have the responsibility of ascertaining the amount of money to be spent on various social activities and as well as monitoring the efforts put in by the board in meeting the CSR provisions.

The BOD must frame appropriate CSR policies after taking into account the recommendations of the CSR Committee and ensure that the said activities are undertaken by the Company.

The Board also has to make certain that the company spends at least two percent of the average net profits of the preceding three years of a particular financial year in the activities which are listed under the CSR initiative, failing which the board has the responsibility to cite reasons for such non-compliance. The average net profits of previous three years are to be calculated on the basis of the provisions of section 198. The CSR activities must be, as much as possible, be concentrated in the local areas of the business.

The various activities, which can be undertaken by a Company as part of their CSR initiative, under section 135 are given in schedule VII which are mentioned below:

- Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water.
- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects.
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water.
- Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts.
- Measures for the benefit of armed forces veterans, war widows and their dependents.
- Training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports.
- Contribution to the Prime Minister's National Relief Fund or any other - fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women.
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government.
- Rural development projects.

These rules are to be applied by the said companies for the financial year 2014-15 onwards.

A. Objective of the Paper

Indian companies are increasingly becoming aware of their responsibility towards the society. With the insertion of the many provisions of MCA, SEBI and the Companies Act 2013 they are bound to invest a part of their profits to social responsibility activities. So out of compliance they are becoming more aware of the effect of their activities towards the society. This paper tries to explore and analyse the requirements mandated in the Companies Act 2013 about CSR and its compliance by the leading companies in the pharmaceutical sector. Owing to the increasing expectations of the customers and other stakeholders from the businesses the CSR activities have become increasingly important. This paper fills the gap in research where compliances to be met by the companies operating in India have been studied.

B. Data and Methodology

For the purpose of the study, the pharmaceutical sector has been selected. The thirty five companies which have been selected are listed in the Bombay Stock Exchange. They are selected in chronological order as per their net profit as on June 2017. The details about their CSR activities have been taken from the respective company's annual reports for 2015-2016 which are specifically given under the Board's report. Various data about the required CSR expenditure according to their net average profits of the three years, and the actual amount spent by these companies have been collected.

Mainly the study is based on secondary data sources and also some articles have been studied. The companies listed in a recognised stock exchange have been selected so the data is reliable. The audited annual reports also increases the reliability of the data studied.

This is an analytical study where the data has been properly analysed in order to see the compliances met by the selected companies and data has been interpreted using basic statistical tools. The names of the companies and the data collected have been given in Table I.

Table I: Name of the Companies Selected for the Study and Details About their Corporate Social Responsibility (Source- Annual Reports of Respective Companies Retrieved from their Website for the Financial Year 2015-2016)

Name of Companies	Average Profits for Last Three Years	Required CSR Expenditure (2% of Average Profits)	Actual CSR Expenditure
LUPIN	27075	541.5	205.1
CADILLA HEALTH	8227.5	164.55	164.55
TORRENT PHARMA	8205	164.1	169.9
AUROBINDO PHARMA	14109.52	282	153
GLENMARK	7,053.57	141.07	119.23

CIPLA	17898.9	358	204.8
DR REDDYS LABS	20994.4	418.88	411.958
DIVIS LABS	10197.27	203.945	79.29
PIRAMAL ENTER	-38.5	0	258.6
BIOCON	4,065	81	81
ALEMBIC PHARMA	3128.9	62.578	62.578
ALKEM LAB	4546.5	90.9	30.1
AJANTA PHARMA	3046.9	60.9	63.9
GLAXOSMITHKLINE	7068.1	141.4	147
SANOFI INDIA	3553.9	71.1	73
ABBOTT INDIA	2802.076	56.042	64.53
PFIZER	3126.4	62.5	64.4
LAURUS LABS	939.68	18.79	27.02
NOVARTIS INDIA	1197.2	23.9	24.3
JB CHEMICALS	1373.89	27.47	24.35
NATCO PHARMA	1387.97	27.75	28.81
STRIDES SHASUN	1277.59	25.55	42.38
FDC	1886.436	37.729	6.4
DR LAL PATH LABS	796.21	15.95	3.826
GRANULES INDIA	994.889	19.898	14.008
SHILPA	922.08	18.44	0
UNICHEM LABS	1456.5	29.13	25.3
SUVEN LIFE SCI	1333.878	26.678	18.158
IPCA LABS	4757.1	95.1	48
INDOCO REMEDIES	766.5	15.3	8.863
JUBILANT LIFE	155.9	17.82	3.12
MERCK	917.4	18.3	5.8
MARKSANS PHARMA	631.83	12.637	0
AARTI DRUGS	835.67	16.714	17.358
BLISS GVS	927.95	18.55	6.69

IV. Pharmaceutical Companies in India

The Indian Pharmaceutical Industry is extremely flourishing industry in the country. It has grown form a turnover of approx. US$ 1 billion in 1990 to over US$ 30 billion in 2015. The country now ranks 3rd worldwide by volume of production and 14th by value, thereby accounting for around 10% of world's production by volume and 1.5% by value. Globally, it ranks 4th in terms of generic production and 17th in terms of export value of bulk actives and dosage forms. It grew at the rate of 8-10 percent during FY 2016-2017 and is expected to grow at 15 percent per annum between 2015 and 2020. In order to increase competitiveness and bringing in latest technology and financing, government has allowed 100 percent Foreign Direct Investment through automatic route for manufacturing of medical services. Owing to the huge potential of the sector for Indian economy, government has taken many initiatives so that it can compete with the global competitors in a better manner. Government has created a separate department for overlooking activities of the pharma companies in July, 2008.

V. CSR in Pharmaceuticals Companies

CSR has become inevitable for the companies if they want to be successful in the long run. This has been necessitated by the different provisions introduced by the government and also because it creates a positive picture for the companies. Undertaking CSR practices is extremely beneficial for pharmaceutical companies. According to an article posted by Chiltern, a pharmaceutical company has everything to gain from its CSR practices and everything to lose if they don't take their responsibilities to the society seriously. (Chiltern, 2005) The drugs manufactured by pharmaceutical companies directly affects the healthcare system in the country, and doing world class research and development will go on solving many healthcare related problems of the society. Investing more in this in addition to adopting policies to contribute to society will lead to creating favourable image for the companies which will benefit it in many ways. The people will be more interested to work for a company which is socially responsible and has a good image. Good employees can be hired who will be efficient. Customers will be loyal towards such company's products which is of high standard and quality which they hold utmost importance, especially in case if it directly affects health.

VI. Analysis and Findings

As it has been mentioned, according to Companies Act 2013 the companies having profit of more than five crore have to spend at least two percent of the average profits of last three years in CSR activities. All the thirty five companies that have been selected fulfil the above criteria and hence, they have to meet the provisions of the Act. The year of study is 2015-2016. The stated companies have to report their CSR activities under the Boards report and have to give details about the projects which have been undertaken. After analysing the reports it can be seen that all the selected companies have adhered to all the provisions and details about their CSR activities have been given mostly as annexure to boards report. All the companies have given details about the CSR Committee members, who are responsible for framing the CSR budget and making policies.

The report begins by stating the mission and aim of the companies regarding the objectives they wish to attain through their policies and the lives they wish to impact. It is followed by details about their committee members and then the information about the amount prescribed and the money actually spent for the year has been given. This is followed by the details about the outlay of the money for specific purposes and in specific areas.

If we look into the areas that the companies have majorly invested their money or earmarked their CSR budget, we can see from our data that mostly the companies have focussed on healthcare, preventive healthcare and education. We have seen that out of the 33 companies that we have analysed for the purpose, the focus has been put on healthcare and education by 30 companies. Secondly, the emphasis has been placed on community development programmes which are focussed towards education unemployment, promoting small industries, basic infrastructure facilities for specific communities of people. 14 out of the 30 companies have focussed on this.

Out of 35 companies, for two companies 2015-2016 was the initial year for complying with the Companies Act provisions so they have been kept out of analysis.

The next major area has been environment and safe drinking water. Environment sustainability has been a very important area whereby 7 to 11 companies have directed their CSR budget. Provision of safe drinking water through various schemes has also gained precedence over the years; many flagship programmes like Piramal Sarvajal among others have been providing safe drinking waters in rural areas. The next area of focus is women empowerment. Seven out of the thirty three companies have spent their CSR budget on areas related to women empowerment. We can see the investment of the companies in Fig. 2.

Fig. 3 shows the information about the required expenditure under the provisions of Companies Act 2013 and the actual expenditure made by the companies in this regard. It can be seen that in 57% of the cases the amount spent has been less than what is required. In 32% of the cases the amount companies have spent more amount than what they were required to spend. In 11% of the cases the amount spent has been equal to the amount stipulated under the act.

In around 31% of the cases more than 60% of the required expenditure has not been actually spent by the companies. Two companies Marksons Pharma and Shilpa Medicare Limited have not spent any amount of money as per requirements. The reason given by the companies is that 2015-2016 is the first year when they are coming under the criteria of making the said expenditure under the provisions of Companies Act and the amount earmarked for CSR not being sufficient to start the planned projects. In case of Shilpa Medicare Ltd. amount equal to two percent of the average profits have been kept separately in bank to be used for CSR activities in future.

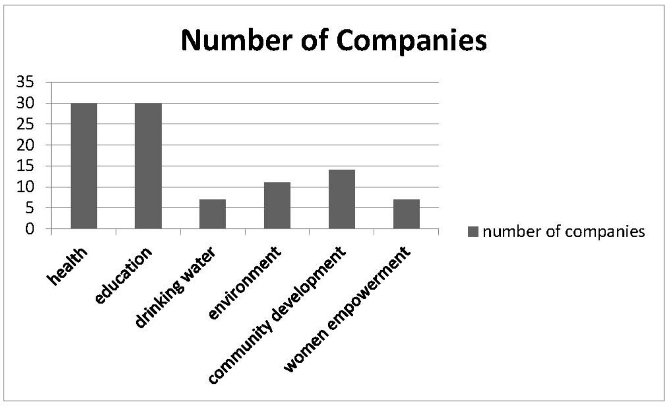

Fig. 2: Areas of Focus for CSR Expenditure

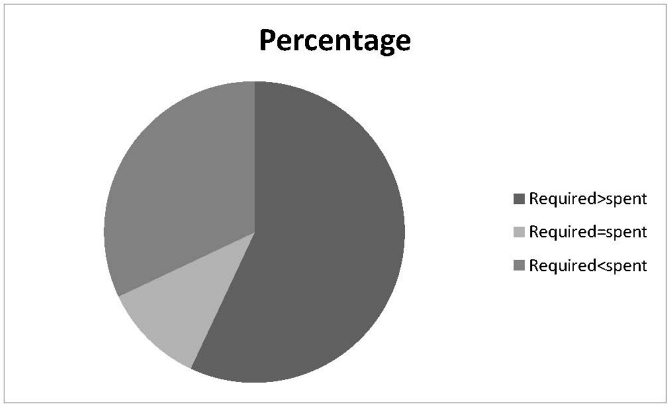

Fig. 3: Showing the Comparison Between the Required CSR Expenditure to be made by the Companies as Per the Provisions of Companies Act 2013 and Actual Amount Spent

In case of Strides Shasun Ltd. an amount more than 66% of the required CSR expenditure has been spent for 2015-2016. If we see the total data then almost 32% of the companies have spent more amount than what is required. As per the requirements of the Companies Act 2013, all the companies whose required amount to be spent is more than the actual amount, have given reasons for not their non compliance. The most common reason being the amount has actually been budgeted and will be spent in the coming years.

The companies which have been studied have either directly spent the money on various CSR initiatives or through various trusts or Non Governmental Organisations. The expenditure that has been made is generally focussed towards the local areas where the business is operating, as per the guidelines of the Companies Act 2013.

Six companies out of the selected thirty five namely Cadilla Health, Torrent Pharma, Dr. Reddys Laboratories, Divis Laboratories, Glaxosmithkline and Sanofi India have also prepared Business Responsibility Reports as per the requirements of SEBI, wherein these companies have reported in a given format the details of its responsibility to its stakeholders. It starts with the basic information about the companies and then they have to report adherence to the nine basic principles as listed in the National Voluntary guidelines on Social, Environmental and Economic responsibilities of Business given by the Ministry of Corporate Affairs.

VII. Conclusion

The period after 2011 for Indian companies in the context of Corporate Social Responsibility has been very crucial as the formal provisions that have been inserted have necessitated the companies to voluntarily invest a part of their profits for the betterment of society. The National Voluntary Guidelines issued by the Ministry of Corporate Affairs has been a formal step towards this direction. SEBI which had mandated preparation of Business Responsibility Report for top 500 companies listed as per market capitalisation in BSE and NSE as part of listing agreement has also been a step forward in that direction. However, the most important in this regard has been the inclusion of provisions under section 135 in the Companies Act 2013, and the same has been studied for top thirty five pharmaceuticals companies in India in this paper. From the analysis it can be concluded that even after the inclusion of the provision the result cannot be called entirely satisfactory. As we saw that in 57% of the cases the companies have spent less than what was required to be spent and it was found out that proper reasons have also not been given in that regard by the said companies. Also for the fact that in 31% of the cases the unspent amount was more than 60% the required amount, it can be concluded that the investment has not been up to the mark. If we see the total amount for all the companies, out of the 2% average profit requirement only 1.58% has been spent. If we see in one respect then this does not paint a completely negative picture owing to the fact that it has been a relatively new practice for the Indian businesses. As we have seen for India the formal concept of Corporate Social Responsibility is a relatively new phenomenon and with the insertion of more requirements it can lead to widespread realisation by the companies of their societal duties and increase their investment in that respect in the future. One problem which is responsible for less compliance by the companies is that it is basically a voluntary requirement and is not legally binding and also strict regulations are not there. The companies are directed to give adequate reasons but the same has been not been conformed with by the companies properly.

The findings which are given are true for the stated number of companies as the other pharmaceutical companies have been excluded from the study, the reason being fewer amounts of profits earned by those companies. The year 2015-2016 has been taken as the year of study as the annual reports for the latest audited period is not available for all the companies. For further research the researchers can study about the level of compliance of the provisions of section 135 in other industries in India as much has not been done in this regard. The comparisons for different companies between different years before and after the said insertion of provisions can also be studied in the future.

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