

Bringing Corporate Governance Mechanism to Better Corporate Social Responsibility: A Critical Analysis of Recent Amendments in India

¹Anusha Malik Tomar

Research Scholar, Department of Law, Manipal University Jaipur

²Dr. Mona Mahecha*

Assistant Professor, Department of Law, Manipal University Jaipur
mahecha.mona@gmail.com, mona.mahecha@jaipur.manipal.edu

Abstract

In 2014 India has single out itself by mandating corporate social responsibility (CSR). Since then the Ministry of Corporation is facing different challenges in making it effective. The two High Level Committee were also set up to discuss the issues in the CSR Law. As a result, there had been numbers of amendments related to definition, duties of CSR committee, monitoring, reporting etc. One of the essential elements that is required in making CSR effective is good corporate governance. Though companies are emphasizing on good corporate governance. Every company in order to be sustainable and responsible is practicing good corporate governance both internally and externally. It is also needed for better implementation of CSR without which there is increased risk of financial frauds. There had been instances of fake project and misuse of CSR funds. Initially companies were hiring NGOs without verifying them. Due to less monitoring and less direct involvement of the company the CSR funds were misallocated. These can be owed to corporate governance failure. Therefore, the need of better corporate governance was felt and accordingly, The Companies (Amendment) Act, 2020 and Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 have been passed. The aim of the paper is to study the implications of the recent changes, in corporate governance rules, on corporate social responsibility. The paper also suggests measures that can further improve corporate social responsibility through corporate governance.

Keywords: Corporate Social Responsibility and Corporate Governance.

1. Introduction

In the continuing journey to excel in corporate social responsibility (CSR), companies and government are taking best possible initiatives to make it a success. This journey had been quite eventful and challenging too. Even in the pandemic, companies came forward to contribute their best for the society. The role of directors of the company has been commendable during the tough time. The companies had modified their internal and external policies including CSR policies in accordance with the situation. The corporate governance played key role in channelizing CSR spending as per the need of the society.

Not only in India, the corporate social responsibility and corporate governance (CG) have also captured the attention of the world from past two decades. All the countries are introducing new norms for CSR and CG in order to have the best outcomes. Some countries like India, Indonesia and Philippines have made CSR mandatory, some countries prefer it to be voluntary and few are in the dilemma of mandating it. Nonetheless most of the countries do have disclosure and reporting regulations in place, even where CSR is voluntary. Therefore, governance is playing its role to make CSR effective without depending on the fact that it is voluntary or mandatory. The corporate governance unlike CSR, is guided by law in most of the countries. The corporations have put in place internal governance rules to have better transparency and accountability. The Companies Act, 2013 with the introduction of mandatory CSR provisions also introduced changes in governance rules with regard to disclosure, duties of directors, auditing procedures, transparency and accountability. The corporations did face challenges and issues in incorporating CSR into business. But in spite of majority compliance it was felt that there are serious issues in the implementation of CSR. It can also be attributed to corporate governance failure. Therefore, in order to suggest measures to improve the implementation of CSR Policies, High Level Committee under the Chairmanship of Mr. Anil Bajjal was formulated in 2015 (HLCR-2015). The second High Level Committee was formed under the Chairmanship of Shri Injeti Srinivas to review the CSR framework and formulate a roadmap for future implementation (HLCR-2018). Based on the recommendations of the committees the required amendments have been introduced in 2021.

The paper would discuss the concept of CSR and CG and how their scope has been widened up over the years to result in more overlapping between the two. In order to study implications of the amendments on

CSR, it is important to understand the relationship between CG and CSR. The inter-relationship of CG and CSR requires deep understanding as it varies within countries depending on the development structure of the country. Later the paper includes latest amendments in Companies (Amendment) Act, 2020 (CA-21) and Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 (CSRP Rules-21) and the overall implications. The paper also suggests other corporate governance measures that can improve corporate social responsibility and finally the conclusion based on the study.

Literature Review

The literature on CSR and CG respectively is very vast. However, the literature focusing on their relationship is quite recent and dates back 15 years. There are few empirical studies studying the relationship between CSR and CG (Chi-Kun Ho, 2005; Jamali 2008; Tuan 2012; Ntim & Soobaroyen 2013). The concept of CSR is relatively longstanding than CG. The basic tenet behind CSR and CG is that both are driven by ethical consideration. Therefore, if any company emphasizes on ethical consideration then there is higher probability that Company is following better CSR and CG practices (Tuan 2012). It has been realized from the previous studies that corporate governance plays a significant role in driving excellence in corporate social responsibility (Shahin & Zairi 2007). India being forerunner in mandating CSR has introduced number of rules and regulations from past 8 years. The paper would however discuss mainly the regulations related to corporate governance. The concept of CG was introduced later but the definitions of CSR developed over the years echo the existence of CG. Carroll in 1999 reviewed the different CSR definitions in the literature. Bowen used the term 'socially responsible' in 1953 for the first time. He suggested that economic decisions and policies should be guided by or in coherence with the objectives and values of social system. From then onwards there had been significant expansion in literature on social responsibility. In 1957, Heald in his article discussed management responsibility and its social relation. In 1960s, most of the thinkers considered social responsibility as the obligation of a businessman and being more of ethical and moral responsibility. Some of the writers Davis, 1960; Mc Guire, 1963 suggested that business decisions may be taken beyond economic interest for the responsibilities to the society. Frederick, 1960 stated that means of production or resources should be modified and used in a manner which leads to the better good to the whole society instead of few.

In 1970s social responsibility broadened to include multiple interest of the groups involved, precisely what we today study as stakeholder theory. The managers should keep in mind the interests of suppliers, local community, employees and others related to the business activity while taking economic decisions (Johnson, 1971). The other viewpoints by Johnson introduces social responsibility as a part of strategic management. Before this profit may have to be compromised in order to do social good. Johnson posed that when businesses involve in social activities they tend to increase profits of the company. Another concept that was introduced was Corporate Social Performance (Sethi 1975; Carroll 1979). Sethi in his article has explained social responsibility in terms of corporate behavior. He defined social responsibility as bringing corporate behavior up to a level where it is congruent with the prevailing social norms, values and expectations of performance" (p. 62). The authors have shifted their focus from defining CSR to enlarging its scope in different areas. This phase is important as there are scintillating developments that will shape the relationship between CSR and corporate governance in the future. Votaw, 1973 considered CSR as fiduciary duty of businessmen (p. 11). Carroll in 1979 explained that "social responsibility of business includes economic, legal, ethical and discretionary expectations which society has from organizations" (p. 500). He stated that there are certain kind of behavior and norms that society expects from business which are beyond the requirement of law (p. 500). He termed it as ethical responsibilities of business. These responsibilities can also be seen as internal corporate governance rules wherein company themselves feels obligated to take certain decisions that are good for the society and are not obligated by the law.

The CSR was first time recognized as a 'process' and not the outcome (Jones, 1980). "Corporate behavior should not, in most cases, be judged by the decisions actually reached, but by the process by which they are reached. Broadly stated, corporations need to analyze the social consequences of their decisions" (Jones, 1980, p. 65). The decisions company internally take would largely depend on corporate governance. But during 1980s the corporate governance was also very nascent so the articles do not mention the term but some of the key definitions by eminent scholars ushered the significance of corporate governance in CSR. By 1980s, author recognized that business can transform social responsibility to business opportunity which would be compatible with profitability (Drucker 1984).

In 1992, for the first time the need of corporate governance was highlighted by Sir Cadbury. In India, the importance of corporate governance was realized during 1990s. CG was defined as "the system of laws, rules and factors that control operations at a company" (Gillan and Starks 1998). In 1999, Kendall in his article stated "good governance entails responsibility". According to him good corporate governance will ensure that company is behaving in a socially responsible manner.

Before analyzing the implications of CG rules on CSR, it is quite interesting to study their relationship. Till early 2000's nothing much was written on the relationship between CSR and CG. One of the precursor articles on the relationship was 'From conformance to Performance: The Corporate Responsibilities Continuum' written by Bhimani and Soonawalla in 2005. It described CG and CSR as "complimentary constituents of the corporate accountability continuum" and are "two sides of the same coin". Both were considered as essential prerequisites for sustainable development (Berghe & Louche 2005; Elkington 2006). Hancock, 2005 considered CG, as one of the main pillars of CSR including environment, human and stakeholder capital. In his views value of CSR can be generated through good strategic governance.

An empirical study by Chi-Kun Ho, 2005 depicted positive relation of CSR to the hallmarks of CG that are qualifications, terms of director, board with strategic leadership. It measured conformance of good corporate governance and discharging of social responsibilities (p. 216). The study showed positive relation between the two. "Good corporate governance provides the foundations of good CSR by creating value-creating relationship with all the stakeholders" (Welford 2007, p. 42). Another very relevant article titled "Corporate Governance as a Critical Element for Driving Excellence in Corporate Social Responsibility" suggested auditing of CG capabilities with respect to CSR (Shahin & Zairi 2007, p. 753). It provided a framework wherein how governance can be used to have better CSR.

The few theories like institutional theory, agency theory, stakeholder theory and others highlighted the relationship between CG and CSR (Jamali 2008). Dima Jamali proposed three different ways in which CSR can be related to CG. He conducted research in Lebanon which is a developing nation and concluded that in a developing nation good CG is a foundational pillar for CSR. And a company without having efficient system of disclosure, accountability, monitoring, and long term approach cannot have effective CSR. In 2012, another study in Vietnam, it was concluded that ethical CSR and corporate governance have positive significant correlation. (Tuan, p. 554).

The concepts of CSR and CG have evolved immensely over the time. The widened scope of the two, in their respective area, has led to the some overlapping between CG and CSR. The various corporate governance factors can be included in rules and policies for better implementation of CSR. Over past years, Ministry of Corporate Affairs has introduced various amendments to the law. It also set up High Level Committees to review the law and propose required changes. First High Level Committee gave its report in 2015. It emphasized on internal corporate governance rules. The major responsibility of monitoring and reporting was of the Board of Director (BoD) and CSR committee. The responsibilities of directors are an essential element of corporate governance (Welford, 2007, p.51). In 2018, another High Level Committee Report came up which suggested much needed key changes. From reporting, auditing, CSR exchange portal, impact assessment in case of large CSR expenditure to making board of directors more responsible for CSR activities of the company, included major changes. Based upon these recommendations, the Companies (Amendment) Act, 2020 and Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 have been passed. In 2020, the Ministry of Corporate Affairs (MCA) had introduced 'Report of the Committee on Business Responsibility Reporting'. It will prepare Business Responsibility and Sustainability Reporting format for listed and unlisted companies. It will include environmental, social and financial reporting.

However, there are some more recommendations that can better CSR performance in India. The specialized committee will improve the implementation process for CSR (Bacon & Brown 1973). This one has already been implemented. The larger board will lead to "higher managerial monitoring" and improves efficiency by conforming to the regulations (Ntim & Soobaroyen 2013). The larger representation will also increase sensitivity towards stakeholder. In some of the relevant studies, it was found that board diversity (Hafsi & Turgut 2012), knowledge and training to directors (Galbreath 2016), inclusion of female in board of directors (Mallin and Michelon 2011) and academic faculty members in board of director (Cho, Jung et. al 2015) will have positive effect on CSR performance. A study revealed that all the board attributes work together in shaping CSR performance (Bolourian et. al 2021). Therefore, wholistic approach should be taken in order to reap full benefits of CSR expenditure.

2. Definitions

i. Corporate Social Responsibility

The nature and the forms of CSR have been continuously evolving. In earlier times it was considered as philanthropy activity, and then it was seen as charities and donations. After that it was considered as paternal responsibility then was understood in terms of trusteeship. It is also considered as ethical and moral responsibility of the corporations. Nowadays it is considered to be the part of strategic management.

Amongst the various definitions, some of them which depicts the corporate governance aspect are mentioned. It was Bowen who used the term socially responsible for the first time. He defined CSR as "the

obligations of business to pursue those policies, to make those decisions or to follow those lines of action which are desirable in terms of the objectives and values of our society”[1]. “CSR was considered as fiduciary duty imposing higher standards of behavior on businessmen than on citizens at large”[2]. The crux of the fiduciary duty is that managers or board of directors taking decisions in the benefit of the company should not be governed by their personal interest and act for the interest of the company [3]. It is also an indispensable feature of corporate governance.

“Corporate social responsibility is the way in which a company manages and improves its social and environmental impact to generate value for both its shareholders and its stakeholders by innovating its strategy, organisation and operations”[4]. This would mean that by introducing new strategies and procedures, which includes innovations in corporate governance mechanism and CSR, company can improve its social impact which would be gainful for all.

“CSR is concerned with the relationship between a corporation and its local society in which it resides or operates, or with the relationship between a corporation and its stakeholders”[5]. This definition highlights the relation between CSR and CG. It signifies the obligations of the company towards the society or community in which it exists. “CSR empirically consists of clearly articulated and communicated policies and practices of corporations that reflect business responsibility for some of the wider societal good”[6]. This would be possible only if there is transparency and accountability in the working system of the company.

The abovementioned definitions implicates that both CSR and CG have common aspects. The basic tenet for which both are practised by a company is its duty or accountability to the society. Votaw considered CSR as fiduciary duty. CG plays a key role in getting this relationship better and be trustworthy.

Although CSR defined in the Companies (CSR Policy) Amendment Rule, 2021 does not reflect such relation, it is very objective in nature. It states that activities mentioned under Schedule VII of the Companies Act 2013 are considered as CSR but excludes few activities such as:

- activities undertaken due to normal course of business having exception of research and development activities related to Covid- 19;
- any activity undertaken outside of India except sports training expenses of Indian nationals
- contribution directly or indirectly to any political party
- activities benefitting employees of the company
- sponsorship activities supported by the companies for gaining market benefits for its product or services
- activities to carry out any other statutory obligations.

But it is very interesting to note that the Draft CSR Rules, 2013 did define CSR in relation with CG. According to the Rules, “CSR is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business process and strategies”[7]. The terms appropriate business process signifies that company should have transparency and accountability in the working system. This is only possible through corporate governance mechanisms.

ii. Corporate Governance

“Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society.”[8]

In UK, Cadbury Report of 1992 highlighted the need for corporate governance. In India it was first incorporated by Securities and Exchange Board of India (SEBI) through Listing Agreement. The wave of corporate scandals in India and other parts of the world and the occurrence of global crises has shown the total failure of the checks and balances which emphasized the necessity to have strong corporate governance system. The definition of corporate governance has also changed over the time. It is considered as the wide range of rules and practices of the companies which would make the whole working system more transparent and accountable. Therefore “the onus is on directors to not only emphasize on economic and individual goals but also to social and communal goals as well”[9]The corporate governance systems throughout the world are now focusing on interests of shareholder and other stakeholders[9]. The widening scope of CG framework has led to the overlapping of it with CSR.

In India CG mechanism is categorized into internal and external CG mechanism. Internal CG mechanism includes ownership structure, capital structure (debt and equity), board of directors and executive compensation[10]. On the other hand, external CG mechanism comprises of legal or regulatory framework and market for corporate control (mergers and takeovers). The amendment in CSR law has introduced both of the CG mechanisms in order to have effective law.

3. Relationship between CSR and CG

The careful study of the definitions of CSR and CG suggest the strong relation between the two. The components of corporate governance like board composition, structure, ownership, internal functioning of the company have implications on CSR. The CG aims at improving internal structure of the company which greatly influence CSR. "When considering the broader conception of CG, it is clear that good governance entails responsibility"[11]. "CG and CSR are complementary fundamental prerequisites for sustainable growth"[12]. The nature of relationship varies within countries depending on the law and policies of the land. Some see corporate responsibility as the ethical driver of corporate governance mechanisms [13]. The corporate governance and corporate social responsibility share a very interesting relation with each other as they can be converging, overlapping and may be different at times.

There are few theories which defines the relationship between CG and CSR. First, institutional theory which provides a theoretical framework for analysing social phenomena and organizational structure of different social world. Accordingly, how effective CG will be for CSR greatly depends on the local socio-political-economic constraints of that particular country[14]. Second, agency theory indicates that managers, being agents of owner, in CSR may prefer their own self-interest at the expense of shareholders[15]. This would undermine the relationship of CG and CSR. Third is the stakeholder theory, the decisions of the Board of Directors not only have effect on shareholders but also has impact on others outside the company like local community, suppliers, customers etc. Good CG lays foundation for CSR by developing value-creating relationships with all stakeholders[16]. Through its decisions companies can emphasize on sustainable products or reduction in pollution thereby benefitting the society in the long run. CG and CSR can be directly related to this theory. The findings of a research done by Jamali on the relationship between CG and CSR in a developing nation, supported institutional theory and stakeholder theory but did not find any evidence for relevancy of agency theory. But the significance of agency theory cannot be ruled out totally as the study was limited to a developing nation i.e. Lebanon.

Dima Jamali also proposed three models which depicts the different ways in which CSR can be related to CG.

1. CG as a Pillar of CSR: In this model CG is one of the basic building block of CSR. "CG, human capital, stakeholder capital, and the environment are the main pillars of CSR"[19]. According to him, value of CSR can be generated through good strategic governance. CSR is the responsibility of Board of the company and good CG is the fundamental requirement of sustainable CSR[20].
2. CSR being Dimension of CG: The "CSR is positively related to qualifications, term of director, board with strategic leadership which are hallmarks of CG"[21].
3. CG and CSR being the part of a Continuum: "CG and CSR are complimentary constituents of the corporate accountability continuum". "CG and CSR are two sides of the same coin".[22]

The relationship between CSR and CG will vary in the countries. In developing countries, monitoring mechanisms, transparency and accountability standards greatly differs from developed countries. Jamali conducted research and concluded that in a developing nation, good CG is a foundational pillar for CSR. And a company without having efficient system of disclosure, accountability, monitoring, and long term approach cannot have effective CSR. On the other hand, CG will not be entirely effective without sustainable CSR.

The empirical studies have also depicted the positive relation between CSR and CG. One of the crucial finding of a study suggests that "better governed corporations are more predisposed to pursue a more socially responsible agenda than their poorly-governed counterparts"[23]. It depicts positive relation between internal corporate governance and level of CSR practices. However, study also pinpoints that the effect may vary depending upon the organizational structure of the company. The institutional ownership and concentrated ownership corporations have negative relation between CG and CSR. But in case of higher government ownership, larger boards, diverse board and more independent board it is positive. India is a mixed and developing economy similar to South Africa therefore the results of the study will be useful in Indian context.

An article on 'Corporate Governance as a Critical Element for Driving Excellence in Corporate Social Responsibility' provides questionnaire which can help companies "to assess their capabilities to harness CG towards CSR"[24]. It also suggested that leadership style also play key role CSR of a company. The transformational leader proved to be more effective.

4. Implications of the Amendments

According to High Level Committee Report of 2015 (HLCR-15), the strict monitoring mechanism was not required as purpose was to develop conducive environment for social responsibility. According to the ministry, it has been only a year and it would be too early to instill stricter laws for the companies. Therefore, the major responsibility of monitoring and reporting was of the Board of Director and CSR committee. The maintenance of data of NGOs was on Board of directors and CSR Committee. The government did not have systematic data

related to NGOs operating in different area. The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 now requires NGOs to register with central government. This will bring more accountability in the system and genuine NGOs will only participate in CSR. The internal corporate governance played significant role during 2015. The companies having good internal corporate governance policies were expected to perform better as they would get directly involved in CSR activities. The small companies faced difficulties in executing CSR activities. The HLCR-15 focused on self-regulatory mechanism and provided autonomy to the companies.

It was decided that after every three year such committee would be set up to assess the development of CSR activities. Again, High Level Committee Report of 2018 (HLCR-18) came up with new issues and recommendations. The Report has recommended various corporate governance rules though still companies are only given the primary responsibility to supervise the implementation of CSR activities. In order to deepen CSR impact, it was recommended that companies having CSR expenditure of more than Rs. 5 Crores in 3 previous financial years are needed to undertake impact assessment for their CSR programs and must disclose the same in the Report. The committee also raised the issue of reporting. In order to have better monitoring, the reporting needs to be improved. The companies should disclose projects, locations and implementing agencies involved in respected CSR projects. The committee proposed to include CSR expenditure within the purview of statutory financial audit. It was also recommended that Board of company should do due diligence of implementing agencies. A very important recommendation being CSR Exchange Portal where all stakeholders can interact and give their side of opinion for better outcomes of CSR. The Annual CSR Survey should be prepared by the Ministry which would be really helpful in studying the yearly impact of CSR on the development. The International Organizations should be allowed to design, monitor or evaluate CSR programs. CSR expert can also be engaged by the companies to assist them professionally. In order to have better governance third party assessment can also be done by randomly selecting 5% of companies mandated for CSR.

From corporate governance point of view, HLCR-18, had provided various important recommendations. Based upon these recommendations, the Companies (Amendment) Act, 2020 and Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 have been passed. Through these laws, corporate governance can bring rewarding results in implementation of CSR. Adding cherry to the cake, in 2020, the Ministry of Corporate Affairs (MCA) had introduced 'Report of the Committee on Business Responsibility Reporting' (RCBR-20). Accordingly, new Committee on Business Responsibility Reporting formed under the chairmanship of Joint Secretary, MCA. It will prepare Business Responsibility and Sustainability Reporting format for listed and unlisted companies. It will include environmental, social and financial reporting. IICA (Indian Institute of Corporate Affairs) and National Foundation for Corporate Governance will provide training and capacity building to companies for adoption of the required format for disclosures.

5. Companies (Amendment) Act, 2020 and Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021: Corporate Governance Rules for CSR

The recent amendments in the Companies Act, 2013 have restructured the rules and regulations for CSR. The rules of corporate governance have also been added and modified in order to have better implementation outcomes of CSR law. The increase in monitoring, provision of annual action plan and channelization of unspent CSR are some of the major changes with regard to corporate governance.

a) CSR Committee

Under the Companies Act, 2013 the companies applicable for CSR are required to form CSR Committee. The committee should consist of three or more directors in which at least one should be an independent director except where company law itself exempts company to have one. The duties of CSR Committee under Section 135 (3) of the Companies Act 2013 are:

- Formulate and recommend CSR policy to the Board of Directors in accordance with activities mentioned in the Schedule VII.
- Recommend CSR expenditure
- Monitor the CSR activities carried out by the company

Previous Law	New Law/Amendments	Implications
	Rule 4 (2)(a) CSRPA Rules, 2021:	
The maintenance of data of NGOs was on Board of directors and CSR Committee. The government did not have systematic data	It requires NGOs to register with central government.	This will bring more accountability in the system and genuine NGOs will only participate in CSR.

related to NGOs operating in different area.		Better research studies can be done if NGOs information is available at single platform.
Rule 5(2) CSRP Rules, 2014	Rule 5(2), CSRPA Rules, 2021:	
CSR Committee shall institute a transparent monitoring mechanism for implementation of CSR projects or programs or activities undertaken by the company.	CSR Committee formulate and recommend to the Board to prepare 'annual action plan' in as per CSR Policy It should include: list of CSR projects or programs manner in which projects are to be executed (doing CSR with NGO or registered trust etc.) details of impact assessment, if required, of the projects that are being taken up	New rules have increased the responsibility of CSR Committee. It would lead to better transparency and accountability in the system. Adequate action plan will help committee to bring in more systematic way to implement CSR projects and through self-assessment it can be improved over the time. This process will reduce leaks of the working system.
Rule 6, CSRP Rules, 2014		
CSR Policy should include: list of CSR projects within the purview of Schedule VII, specifying modalities of execution of project and schedule for the same. Proviso 2: BoD shall ensure activities included in CSR Policy are related to Schedule VII CSR Policy shall specify surplus arising out of CSR Projects shall not form part of business profit of a company.	Omitted (Some of the clauses has been inserted with few changes in the new law)	In the previous law, it was not detailed. The BoD did not have much responsibilities to look over the action plan. The superficial control was sufficient. There was minimum governance. But now amendments have changed it all. There is more clarity, less ambiguity and better governance in the law.

The specialized committee for CSR will improve the implementation process[25]. The good structural method (like action plan and more monitoring by Board) will improve corporate governance[26] and CSR. It is recommended that composition of CSR committee can also be changed for better CSR. It was observed in a study that inclusion of female in board of directors increases the CSR performance of the company[27]. However, a recent study of the companies in India it has shown that women representation in CSR Committee of the majority of the company is very low[28]. Therefore, minimum of one women member in CSR committee will provide added benefits in CSR.

b) Board of Directors

There are various changes in corporate governance rules under the latest amendments. The responsibilities of the board of directors in terms of monitoring and getting more involved in the CSR activities has been increased. In case of unspent CSR amount, the Board is required to provide reason in the report for not spending the specified amount under Section 135 (5) of the Companies Act, 2013.

Previous Law	New Law/Amendments	Implications
Rule 4(2) CSRP Rules, 2014	Rule 4(1) CSRPA, 2021	
The Board of a company may decide to undertake CSR activities approved by the CSR Committee through registered trust, society or company.	The Board shall ensure that CSR activities are undertaken by company itself or through other entities mentioned in the rules.	Earlier the word 'ensure' was not mentioned in the Rule 4. The addition of the term implies increased duty of BoDs. Earlier it was superficial supervision.

	Rule 4(5) CSRPA, 2021 The Board should satisfy that CSR fund should be disbursed in adequate manner and should be certified by person responsible for finances.	The more precautions will be taken while engaging entities for CSR. Previously there had been instances of fake NGOs showing fictitious projects. The corporate governance will play key role as it would bring in more accountability. The funds would be disbursed by certified person. It will reduce misuse of funds.
	Rule 4(6) CSRPA, 2021	
Nothing mentioned in the Rules	The Board of the company is required to supervise the implementation of the ongoing projects with regard to timeline and yearly allocation.	The direct involvement of the Board will improve monitoring. It will reduce the possibility of dummy projects, promote timely completion of projects and will save resources. The ministry should also focus on providing training to the directors for the better CSR performance.
	Proviso to Rule 5 CSRPA, 2021	
Nothing mentioned in the Rules.	The Board can change the action plan at any time as per the requirement but needs to give justification for the same.	It has brought more control and direction from BoD over the CSR Committee.

The characteristics of Board also have impact on CSR performance of the company. It has been empirically tested that board diversity positively impacts CSR performance[29]. “The different board attributes interact with each other in shaping CSR performance” [25]. The directors having CSR knowledge and related training have positive effect on CSR performance[30]. Some research studies have shown that inclusion of female directors improves role of directors in CSR activities which leads to higher CSR performance[27]. Also, academic faculty members as a board of director have positive impact on CSR performance[31]. The increased supervision of Board or greater involvement in CSR activities would bring in more efficiency in the entire working process of CSR. Since majority of companies were against criminalizing the non-adherence of CSR law therefore the next best possibility is strict supervision within the company itself.

c) CSR Reporting

The Board is required to provide annual report on CSR. The highlight of the latest amendments being impact assessment report. The assessment reports are required to be submitted along with annual CSR report. The assessment should be done through independent agency. The change has been brought with the intention to have better implementation of CSR activities.

Previous Law	New Law/Amendments	Implications
	Rule 8 (2) CSRPA, 2021	
Nothing mentioned in the rule	Foreign company coming under the ambit of CSR are also required to file CSR Report along with the balance sheet.	Better records on foreign entities. Avoid unscrupulous activities through foreign entity. Improve transparency.
	Rule 8 (3) CSRPA, 2021	
Nothing mentioned in the rule	The companies which are spending Rs.10 crores or more on CSR should provide impact assessment of the projects having outlay of Rs.1 crore.	This may not be the concrete solution as the rule itself is fraught with many issues. The assessment report of limited projects will not provide wholistic idea of the implementation of CSR.

		<p>The independent agencies may not provide true picture of the impact. No company will show negative impact of their CSR projects in any particular area. Company might influence independent agencies. In the coming time, impact assessment report should be area-wise. This would lead to better assessment of the development of a particular area and would help in depicting neglected areas.</p>
Rule 9 CSRP, 2014	Rule 9 CSRPA, 2021	
BoD after considering recommendations of CSR committee, approve the CSR policy and disclose contents in its report and displayed on the company's website.	<p>The BoD shall mandatorily disclose the composition of the CSR Committee, CSR Policy and Projects approved by the Board on their website.</p> <p>The word 'mandatorily' has been inserted.</p>	<p>Increases accountability of Directors. It will be helpful for research studies. But the amendments do not provide clear format for CSR disclosure which would lead to incomplete information on the websites.</p>

A recent study conducted to see the implementation of CSR regulations in India, for the year 2018-19, highlighted various lacunae in the regulatory framework[28]. Moreover, companies are adopting “mechanical or tick-box approach for complying with legal mandate on CSR” (Jumde 2020). The findings of the study show that there are “no robust procedures for internal monitoring and auditing of the funds utilized by implementing agencies or whether benefits have actually reached to the beneficiaries or not”[28]. However, the amendments have been introduced post study but various shortcomings still exist in the system. There is no proper reporting format that has been provided by the latest amendments. The governance system of the country falls short from achieving the best practices. The external monitoring is very necessary as disclosure of information on websites might not give true picture and should not be “window-dressing”[32]. In another words governing the governance is also important. The government should also be vigilant whether rules and regulations are being followed properly.

d) Regarding CSR Spending

Previous Law	New Law/Amendments	Implications
Second Proviso to Section 135(5) The Companies Act, 2013	Section 135(6) The Companies (Amendment) Act, 2019	

The company shall specify reasons if failed to spend the required amount.	The companies are now required to transfer unspent CSR amount to any of the funds specified in Schedule VII within six months, unless it is for any ongoing project. In such case company can keep funds in Unspent CSR Account and utilize it as per the need of the project. The balance unspent amount after the completion of the project will be transferred to the scheduled funds.	Earlier various companies did not spend the required amount simply by providing reasons for it. There was no accountability of unspent amount. But now the amendment would make it easy for government or company itself to track down the CSR spending. The role of corporate governance is very important here as the unspent amount might not get channelized adequately without proper supervision. The board of directors have to be very vigilant about the CSR spending otherwise company will have to pay high penalty. Whistle-blowing as CG mechanism will be beneficial[33].
	Section 135 (7) The Companies (Amendment) Act, 2020	
	If the required amount is not transferred then companies would be penalized for the default.	
Schedule VII (ix), The Companies Act, 2013	Schedule VII (viii), The Companies Act, 2013	
Included Prime Minister National Relief Fund (PMNRF) or any other fund set up by the Central Government or State Government for socio-economic development.	Introduction of PM CARES Fund with Tax benefits, in addition to PM National Relief fund and any other fund set up by the Central Government or State Government for socio-economic development.	Tax benefit would divert CSR spending towards scheduled funds. The whole purpose of making company more socially involved would be defeated. The Prime Minister Relief funds are generalized and get contributions other than CSR also. The statement of income and expenditure of PMNRF does not have any separate head for CSR contributions. There is no bifurcation as to what amount of contribution is under CSR. As a result, contributions may not be spent on the scheduled CSR activities.

There has been sudden upsurge in the contributions in PMNRF after 2014. This indicates major CSR contributions in the fund. Also, there is massive gap between the amount of contribution and the expenditure in both PMNRF and PM CARES Fund. The amount is getting accumulated in the account whereas the need is today to spend it on the society and prepare for future adversities. An important amendment should be introduced to cap the amount of contributions towards the scheduled funds.

The one of the statements mentioned on the National CSR Portal is “CSR extends more than corporate philanthropy. It is a collective responsibility to build society which supplements government’s efforts to achieve inclusive growth.” The purpose of introducing CSR is to motivate companies to do good for society by being involved in it. But giving tax benefits and making them invest in government pet projects shows that government just need companies to “invest in social development” instead to “undertake CSR in actuality”[28].

6. Conclusion

The concepts of CG and CSR has been widened over the years leading to more overlapping between the two. It cannot be denied that there is strong relationship between the two. However, the degree of relationship will greatly depend on social, political and economic structure of the country. India having history of

implementation issues, will surely have impact on the results of corporate governance mechanisms for CSR. Since the inception of mandatory CSR laws, innumerable corporate governance changes have been made to the law with the sole objective of making CSR more effective. MCA went to the extent of criminalizing it but due to retaliation from business community it was taken back. The other amendments such as increasing responsibility of board of directors, registration of NGOs with central government, emphasis on monitoring, channelizing of unspent CSR amount and others are welcoming changes. But funds directed to PM Relief Fund may not be used for CSR purposes. The companies are directed to contribute to the funds where there is low transparency regarding expenditure on CSR activities. The other amendment related to impact assessment, it is to be done only for limited projects. Instead of project-wise, impact assessment should be 'area-wise' in the coming years. This would provide better picture of the development of a particular area and help in doing comparative analysis of the development due to CSR in different parts of India.

HLCR-18 and RCBR-20 recommended various changes like reporting format, financial auditing, CSR exchange portal for public, due diligence of agencies etc. The companies will disclose complete information on their websites. The ground issues will come to limelight if suggestions will be considered from public domain. In addition to the recent amendments, paper suggests few amendments regarding the composition of CSR committee like including women and academicians in the committee, CSR specific auditing, annual survey by government, training of directors for better CSR performance, balanced reporting format, cap on contributions towards scheduled funds and introducing whistle-blowing as a corporate governance mechanism to deal with frauds. Therefore, wholistic approach should be taken in order to reap full benefits of CSR. The structural revamp of CSR Law is very promising and with few more amendments it would bring huge social change in the country and will converge the needs of the society to the ways through which these can be fulfilled.

References

- [1] Howard R. Bowen, *Social Responsibility of the Businessman*, New York, Harper and Row (1953)
- [2] Dow Votaw, Genius Becomes Rare: A comment on the Doctrine of Social Responsibility Pt. II, *California Management Review*, 15(3), 5-19 (1973) <https://journals.sagepub.com/doi/abs/10.2307/41164435> (last visited Oct 25, 2021).
- [3] Anurag K. Agarwal, *Corporate Governance: Changing Trends in Interpreting Fiduciary Duty*, Indian Institute Of Management Ahmedabad, Working Paper No. 2013-10-05 (2013)
- [4] Promoting a European Framework for Corporate Social Responsibility, *Europarl.europa.eu* (2021), Commission Green Paper, EU, 2001, https://www.europarl.europa.eu/meetdocs/committees/deve/20020122/com%282001%29366_en.pdf (last visited Oct 25, 2021).
- [5] Michael Rayman & David Crowther, *Perspectives on Corporate Social Responsibility*, Ashgate (2004).
- [6] Dirk Matten & Jeremy Moon, "Implicit" and "Explicit" CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility, 33 *Academy of Management Review* 404-424 (2008).
- [7] Draft Corporate Social Responsibility Rules, 2013.
- [8] Overview Foreword by Sir Adrian Cadbury, Iskander R. Magdi & Naderah Chamlou, *Corporate Governance: A framework for implementation*, World bank Group (2000).
- [9] Ann K. Buchholtz et al., *Corporate Governance and Corporate Social Responsibility*, Oxford Handbook of Corporate Social Responsibility (Andrew Crane et al. ed., 2008).
- [10] Bhaduri, Saumitra and Ekta Selarka, *Corporate Governance: An Overview*, *Corporate Governance and Corporate Social Responsibility of Indian Companies*, Chapter 5, 61-72 (2016).
- [11] N. Kendall, *Good Corporate Governance*, Institute of Chartered Accountants in England and Wales, London (1999)
- [12] Lutgart V D Berghe & Celine Louche, *The Link Between Corporate Governance and Corporate Social Responsibility in Insurance*, 30 *The Geneva Papers on Risk and Insurance -Issue and Practice* 425-442 (2005).
- [13] Michael Blowfield & Alan Murray, *Corporate Responsibility: A Critical Introduction*, Oxford University Press (2009).
- [14] Dima Jamali, Asem M. Safieddine & Myriam Rabbath, *Corporate Governance and Corporate Social Responsibility Synergies and Interrelationships*, 16 *Corporate Governance: An International Review* 443-459 (2008).
- [15] Philipp Kruger, *Corporate Goodness and Shareholder Wealth*, 115 *Journal of Financial Economics* 304-329 (2015).
- [16] Richard Welford, *Corporate Governance and Corporate Social Responsibility: Issues for Asia*, 14 (1), *Corporate Social Responsibility and Environment Management*, 42-51 (2007).

- [19] John Hancock, *Investing in Corporate Social Responsibility: A Guide to Best Practice, Business Planning & the UK's Leading Companies*, Kogan Page, London & Sterling VA (2005).
- [20] John Elkington, *Governance for Sustainability*, 14 *Corporate Governance for Sustainability*, 522-529 (2006).
- [21] Chi-Kun Ho, *Corporate Governance and Corporate Competitiveness: An International Analysis*, 13 *Corporate Governance for Sustainability*, 211-225 (2005)
- [22] Alnoor Bhimani & Kazbi Soonawalla, *From Conformance to Performance: The Corporate Responsibilities Continuum*, 24 *Journal of Accounting and Public Policy* 165-174 (2005).
- [23] Collin G. Ntim & Teerooven Soobaroyen, *Corporate Governance and Performance in Socially Responsible Corporations: New Empirical Insights from a Neo-Institutional Framework*, 21, *Corporate Governance: An International Review*, 468-494 (2013).
- [24] Arash Shahin & Mohamed Zairi, *Corporate Governance as Critical Element for Driving Excellence in Corporate Social Responsibility*, 24 (7), *International Journal of Quality & Reliability Management*, 753-770 (2007).
- [25] By Bacon and Brown 1973 as cited in Soudabeh Bolourian, Andrew Angus & Leila Alinaghian, *The Impact of Corporate Governance on Corporate Social Responsibility at The Board-Level: A Critical Assessment*, 291 *Journal of Cleaner Production* 125752 (2021).
- [26] Laura F. Spira & Ruth Bender, *Compare and Contrast Perspectives on Board Committees*, 12 *Corporate Governance: An International Review*, 489-499 (2004).
- [27] Christine A. Mallin & Giovanna Michelon, *Board reputation attributes and corporate social performance: an empirical investigation of the US Best Corporate Citizens*, 41 *Accounting and Business Research* 119-144 (2011).
- [28] Akanksha Jumde, *The Law on CSR in India: An Analysis of its Compliance by Companies through Corporate Disclosures*, 21 (1), *Journal of Corporate Law Studies*, 253-282 (2020).
- [29] Taïeb Hafsi & Gokhan Turgut, *Boardroom Diversity and its Effect on Social Performance: Conceptualization and Empirical Evidence*, 112 *Journal of Business Ethics*, 463-479 (2012)
- [30] Jeremy Galbreath, *The impact of board structure on corporate social responsibility: a temporal view*, 26 *Business Strategy and the Environment* 358-370 (2016).
- [31] Charles H. Cho et al., *Professors on The Board: Do They Contribute to Society Outside the Classroom?*, 141 *Journal of Business Ethics* 393-409 (2015).
- [32] Barnali Choudhary & Martin Petrin, *Corporate Governance that 'Works for Everyone': promoting Public Policies through Corporate Governance Mechanisms*, *Journal of Corporate Law Studies* (2018).
- [33] Uchechukwu Nwoke, *Whistleblowing as a Corporate Governance Mechanism: South Africa and Nigeria in Perspective*, 19 (2) , *Journal of Corporate Law Studies*, (2019).