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CORPORATE SOCIAL RESPONSIBILITY AND THE MANDATORY INDIAN LEGAL REGIME: UNDERSTANDING WILLINGNESS OF CORPORATIONS

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ABSTRACT

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The theoretical construct of Corporate Social Responsibility has been developed by authors in the 20th century whereas philanthropic activities have been associated with corporations since its birth. Archie B. Carroll developed 4 dimensions of corporate social responsibility: economic, legal, ethical and philanthropic. This has further garnered the scope of understanding CSR from different perspective. The study aims to harmonize the development of corporate social responsibility focusing on a model based approach depicting a paradigm shift from shareholder to stakeholder theory of doing business. The research also ferrets out the moral and legal dimensions of CSR in India. A study has been made to understand the CSR fund utilization by twenty companies from 2014 to 2018 listed in the Bombay Stock Exchange. This study helps in understanding the willingness of corporations to spend towards CSR activities and subsequently measures have also been suggested for better engagement of corporations to be more socially responsible.

KEYWORDS: *Corporate social responsibility, Fund, Listed companies, Stakeholder, Willingness*

1.INTRODUCTION

Business creates wealth, employment, market, new technologies and competition among the market players. In this process raw materials are converted into profitable goods or services with inputs from the society itself (Rousseau, 1762). Western thinkers such as Cicero and Indian economist Kautilya have advocated business practices based on moral principles and controlled greed (Pegg, 2003). Rousseau, Hobbes and Locke expressed society and corporations must coexist and contribute to the well-being of each other (Bhathacharya, et al., 2008). Rousseau's 'social contract theory', Franklin's 'doing good' (Saha, 2006) and Gandhi's 'trusteeship' (Sarukkai) strengthens a moral aspect of corporations (Joseph, 2009).

Corporate social responsibility (CSR) emanates from earlier debates of role of business in society (Sekhar, 2002). Fabig and Boele add a global outlook to CSR (Fabig & Boele, 1999). The true meaning of CSR globally is yet to be derived because it differs from practitioners to researchers (Fox, 2004). The contextual meaning also varies from civil society groups to private sector (Idemudia, 2011). Responsibilities of companies in developing nations are also defined in national context (Baskin, 2006): Malaysian firms are influenced by religious notions (Zulkifli & Amran, 2006); in Argentina by economic crisis (Newell & Muro, 2006); in India by poverty and education (Shilpa, et al., 2017) and in South Africa by racial inequality (Fig, 2005). Commission of the European Communities defined CSR on social and environmental concerns (Commission of the European Communities, 2001). The WBCSD defined CSR in a holistic sense including sustainability, employees, community and society (World Business Council for Sustainable Development). Definition helps in identifying responsibility. Let us reexamine CSR as it developed in the academic sphere reflecting business and societal needs.

2. LITERATURE REVIEW

Reviewing the literature related to CSR reveals a paradigm shift from shareholder theory to a more universally accepted stakeholder approach.

The stakeholder approach deals with a responsible attitude of corporations in form of community relationship, assistance programmes, scholarships, cultural heritage preservation and beautification of cities, etc. This inter-disciplinary subject encompasses huge range of issues dealing with compliance, responsibility, challenges and management (Gopalsamy, 2006).

After Great Depression of 1929, role of corporations needed to be revisited as its impact sent ripples across the globe. Discourse on the issue started in 1930s with Berle – Dodd dialogue, where the former opined that social responsibility was only in theory and not in practice (Berle, 1932). Prof. Dodd proposed for a change of outlook by corporations towards society (Dodd, 1932) relying on Mr. Owen D. Young (I929) concept of trusteeship between manager and company. Four entities were identified in the eco-space of corporations: stockholders, employees, customers and general public (Weiner, 1935). Prof. Dodd later himself realized the difficulty in enforcement because it involved a principle of vicarious acquisitiveness (Dodd, 1935). We find years later the whole debate comes to rest after twenty years with admittance by Prof. Berle (Berle, 1954).

As social responsibility has been conceived from different perspectives, it has created indistinctness (Carroll, 1979). Bowen provided a nonfigurative idea of CSR linking obligations to objectives and values of our society (Bowen, 1953). Later scholars referred to social obligations as beyond economic interest of corporations (Davis, 1960) and ethical principles between corporations and society (Eells & Walton, 1961).

Years later, McGuire argued the societal outlook was inherently present in the course of doing business (Mcguire, 1963). Waltonstressed on essential ingredient of corporation's social responsibilities that include voluntarism (Walton, 1967), linking voluntary organizations to corporation, and such activities may not be measurable with economic returns. Manne also argued on voluntary nature of CSR as it can be conceptualized above economic and legal norms (Manne & Wallich, 1987). Some scholars have also listed areas where the corporation should focus on: pollution problems, racial discrimination, consumerism, poverty etc (Hay, et al., 1976). Interestingly Steiner has tried to understand the responsibilities of corporations in various spheres, merging traditional economic production, government dictated regime and voluntary area (Steiner, 1975).

The stakeholder approach has also been addressed on motivational aspect rather than performance (Ackerman & Bauer, 1976). This leads to an idea of responsiveness as developed by Sethi, presenting three state schema of behavior: social obligation, social responsibility and social responsiveness (Sethi, 1975).

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In 1979, Carroll asserts that four responsibilities in pyramidal form: economic, legal, ethical and discretionary, existed for business organizations from their birth. He even clarifies the proportion of performance by corporations. Deviating from Ackerman's 'motive' and Sethi's 'social responsiveness' Carroll suggests that the four classes are simply to remind us those motives or actions are embedded in his pyramidal form.

The approach of shareholders theory has transformed into a multi-faceted stakeholder model where various stakeholder earlier ignored, were included. Even there has been identification and categorization of stakeholders. Management of stakeholders has been mooted by various scholars (Evan & Freeman, 1993). This would deal with shareholders, employees, customers, suppliers, communities and other groups. A stakeholder approach emphasizes active management of business environment, relationships and promotion of shared interests (Freeman, 1984). It is not antithetical to traditional aim of maximizing shareholder wealth. It called for an approach to strategic management which integrates economic, political, and moral analysis (Freeman & Mcvea).

Years later Carroll changed the top segment of his pyramid from discretionary to philanthropic responsibility (Carroll, 1991). He points out without any overtone that in more pragmatic and in managerial terms the firm should be a good corporate citizen (Carroll, 1999). Interestingly Carroll refers to different new nomenclatures surrounding social responsibilities such as stakeholder theory (Johnson, 1971), business ethics theory (Mcguire, 1963), corporate social performance (Kreps, 1940), corporate social responsiveness and corporate citizenship. Though relentless efforts were been made to draw the contours CSR, WBCSD mentioned that there was still a definitional void (World Business Council of Sustainable Development, 2016).

Challenges were portrayed by Porter and Kramer outlining decline in corporate philanthropy in USA because companies were squeezed between proponents of CSR and investors (Porter & Kramer, 2002). They advocated for strategic giving which in return would help in cause-related marketing. Later on same authors opined that when CSR is analyzed using the same framework that guides corporation, such choice becomes a source of opportunity, innovation, and competitive advantage (Porter & Kramer, 2002). This creates a distinction between responsive CSR and strategic CSR (Teresa et al., 2013).

Schwartz and Carroll in 2003 worked upon the pyramidal structure and formulated a more intrinsic three domain approach of CSR (Schwartz & Carroll, 2003). The fourth tier, 'philanthropy' and hierarchical relationship vanished from Carroll's pyramid (Reidenbach & Robin, 1991). Different corporate activities such as Johnson & Johnson recalling Tylenol in 1982 (Davis & Frederick, 1984), Malden Mills' giving wages to employees in Massachusetts even after destruction of factory by fire (Teal, 1996), Union Carbide and the Bhopal gas tragedy due to lower standards (Trevino.& Nelson, 1995), Wal-mart's decision of stopping sale of cigarettes in Canadian stores (Heinzl, 1994) were discussed to understand whether the three domains really merge. Later Porter and Kramer brings out a concept of 'shared value' between corporations and society (Porter & Kramer, 2011).

There has also been divergence among writers between stakeholder theory and CSR. Freeman and Dmytriyev mention the concepts as distinct from one another with some overlap (Freeman & Dmytriyev, 2017). Though both the theories stress upon social interests, stakeholder theory would be community specific to the area of operation whereas CSR would be prioritizing its orientation towards society at large. With such views on CSR we find stakeholder approach fixing responsibility of corporations gaining prominence.

3.CSR AND INDIA: A PARADIGM SHIFT

Business operations in India by Hindustan Coca Cola Beverages Pvt. Ltd. revealed depletion of ground water due to bottling units for manufacture of soft drinks in the rural areas of Rajasthan, Uttar Pradesh and Kerala namely Kala Dera, MehdiGanjand Plachimada.

On the contrary Tata's concern for community is reflected in what Jamshedpur is today (Parbat, 2014). The Birlas, Godrej family, Bajaj, TVS group, Mahindra, are well known business groups engaged in philanthropic practices for years. Many other Indian companies like ITC, Reliance, Infosys, Hindustan Lever, several banks and PSUs also support social development (Gupta, 2007). Social and Rural Research

Institute's survey revealed 69 % (414 out of 600 companies surveyed) provided various kinds of support for social development. A sample of select 50 companies under study indicated that over 80 % companies made social contribution (Bhattacharya, 2006).

Internationally, researchers have identified different key roles for governments in the promotion CSR (Aaronson & Reeves, 2002): mandating, facilitating, partnering and endorsing (Fox, Ward & Howard, 2002). France's disclosure requirements by all listed companies (Barbu, et. al.)] and Belgium's registry of eco-labels certifications (International Law Firm) are steps towards cognitive efforts by governments.

In the Indian context we find a harsher stipulation. In India the Companies Act, 2013 gives provisions for creation of CSR Committee by companies qualifying a threshold limit [The Companies Act, 2013, § 135(1)]. There is a stipulation of compulsorily spending atleast 2% of its average net profits under the legislation [Companies Act, 2013, § 135(5)]. This stipulation impacts holding, subsidiary as well as foreign company in India [(Corporate Social Responsibility Policy) Rules, 2014, Rule 3(1)]. The Schedule of the Act provides wide range of areas for engaging in CSR Activities ranging from poverty, sanitation, education, gender equality, environment, relief funds, slum development, etc. (Companies Act, 2013, Schedule VII). Thus the era of voluntary CSR through guidelines (Ministry of Corporate Affairs, 2009; Ministry of Corporate Affairs, 2011) paved the way for mandatory CSR regime. Under the above mentioned context it is pertinent to understand whether CSR has been able to meet its obligation. Evaluating the socially responsible practices becomes important to understand corporate willingness for business houses. As the law has been framed to make CSR mandatory for companies qualifying a threshold limit, a study of certain category of listed companies will help us to understand CSR activities from company's perspective.

4.METHODOLOGY

In a nutshell, we are trying to decipher the spending of CSR funds by business houses as it has been revealed in their annual reports. A time span of four years has been taken into consideration to understand the motif of the companies whether they are interested in CSR activities. To understand the CSR spending of companies from 2014 to 2018 under the new legislation of 2013, the study has been conducted of 20 Bombay Stock Exchange listed companies in India who qualify the net profit criteria of Rs. 5 crore in preceding financial year. A segmentation of companies has been made based on the amount of net profit. Firstly, top 10 companies having the highest amount of net profit as reflected on 18th November, 2019 in the website of Bombay Stock Exchange has been analyzed. Secondly, 10 companies within Rs 5 crore to Rs. 100 crore of net profit only as reflected on 18th November, 2019 in the website of Bombay Stock Exchange has been studied. Thus two sets of companies based on net profits have been taken for analysis: one set reflecting the top companies with highest net profits and another set with companies just above the threshold limit.

5. RESULTS

Figure 1 and 2 below deals with Indian companies namely HDFC, Infosys, Indian Oil, ITC, and NTPC, ONGC, Coal India, Tata Steel, Reliance Industries and TCS. These companies were selected based on the highest net profit Bombay Stock Exchange listed companies in 2019. The amounts have been identified from the Annual Reports of the companies from 2014 to 2018 as reflected in their website. The graphs have three indicators: CSR spent, prescribed CSR amount by legislation and average net profit of immediately preceding 3years. It is found that in the initial financial years of 2014-15 and 2015-16 HDFC was unable to utilize the prescribed CSR amount but the spent improved in 2016-17 and 2017-18. HDFC even spent more than the prescribed amount in 2017-18 (refer to **Figure 1**). Infosys and ITC have been able to meet the CSR target for all the years and Indian oil even lagging in the first two years were able to spend the prescribed amount in the last two financial years. NTPC which is a Government of India undertaking lagged considerable in 2014-15 but spent much more than the prescribed amount in the last three years (refer to **Figure 1**).

Similarly another Government of India undertaking ONGC could not meet the prescribed limit in first two years but fulfilled its social responsibility expenditure in the last two years (refer to **Figure 2**). Companies such as Coal India, Tata Steel and Reliance Industries have performed much better being socially responsible in all the four years. However Tata Consultancy Services (TCS) was unable to meet the social expenditures obligations prescribed in any of the four years taken for study (refer to **Figure 2**). Though in the initial years 2014 and 2015 some companies have not been able to fully utilize the CSR funds, they revealed remarkable spent in the later years with sometimes spending more than the prescribed limit. This reflects a commitment towards performance of social responsibility by these corporations out of which some are Public Sector Undertaking such as Indian Oil, NTPC, ONGC and Coal India.

Figure 3 and 4 deal with Indian companies namely Pennar Industries, Kirloskar Ferrous Industries, Jindal Worldwide, Linde India, Man Industries India Limited, Mahindra Holidays & Resort India Limited, Siyaram Silk Mills, Nahar Spinning Mills, Renaissance Global and Tinplate Company of India. These companies were selected based on their net profit in 2019 which ranged from Rs. 5 crore to Rs. 100 crore. The amounts have been identified from the Annual Reports of the companies from 2014 to 2018. The graphs have three indicators: CSR spent, prescribed CSR amount by legislation and average net profit of immediately preceding 3years. However, analysing the CSR spent by these companies in the abovementioned 4 years reflects a grim picture. Companies such as Pennar Industries, Man Industries and Jindal Global have failed to achieve the target prescribed under the legislation (refer to **Figure 3**). However Kirloskar Ferrous and Linde India has performed much better compared to its peers (refer to **Figure 3**). Some companies such as Tinplate, Mahindra Holidays & Resort and Reniassance Global which are part of big business houses have fulfilled their social obligation by spending the prescribed amount (refer to **Figure 4**). However Siyaram Silk for the initial two years could fulfil the commitment but later on reached the prescribed limit (refer to **Figure 4**). It was Nahar Spinning Mills which failed miserably to spend the prescribed CSR amount throughout the four years with an exception in financial year 2015-16 (refer to **Figure 4**).

On comparing all the four figures, the commitment of the companies in Figure 3 and 4 towards CSR seems lacking compared to the top 10 companies mentioned in Figure 1 and 2. It is pertinent to note that the companies those are part of reputed business groups such as Mahindra and Tata have shown willingness to perform CSR even if they have failed in the initial years. It is interesting to note that few companies such as Linde India, has taken voluntary initiatives in CSR spending inspite of nil CSR mandate in the year 2015-16.

6.CONCLUSION

The development of concept of CSR has fostered the growth of stakeholder responsibility of corporations. Outlook of business houses has changed from shareholder to stakeholder perspective, making the corporations attenuate different societal problems.

It is through legislative will, corporations are now required to contribute to the development of India mandatorily. CSR in India, under the new legal regime, has taken shape of a legal duty which the business houses are bound to perform though it existed in the Indian society before 2013 as a moral objective. An in-depth study is required in the Indian context whether it creates an additional burden on corporation operational in an emerging economy. The study has shown that some of the listed companies give an indication that the willingness of spending in CSR activities is lacking for companies with lower financial results and lower net profits. There may be several constraints in utilizing the funds within the stipulated financial year.

However, the ideology of serving the society should be spontaneous and transparent. The government needs to take steps to obligate companies spend the prescribed CSR amount for socially responsible activities within the same financial year. It can be achieved through a stricter regulation of compulsory spending and a stringent reporting regime. CSR contributions need to be utilized for various social activities in a developing country as ours and similarly the government should also develop a robust corporate environment that harbors an atmosphere of willingness in the business houses so that the objectives of CSR does not get defeated.

FIGURES

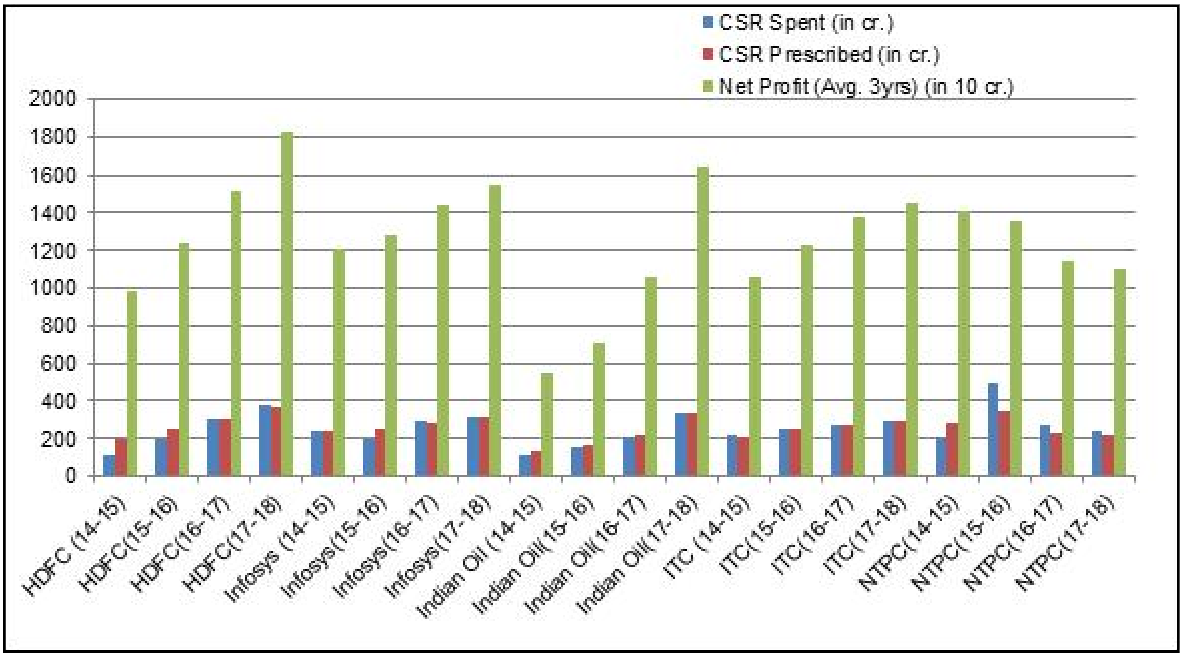

Fig. 1. CSR spent by 5 listed companies with highest new profit.

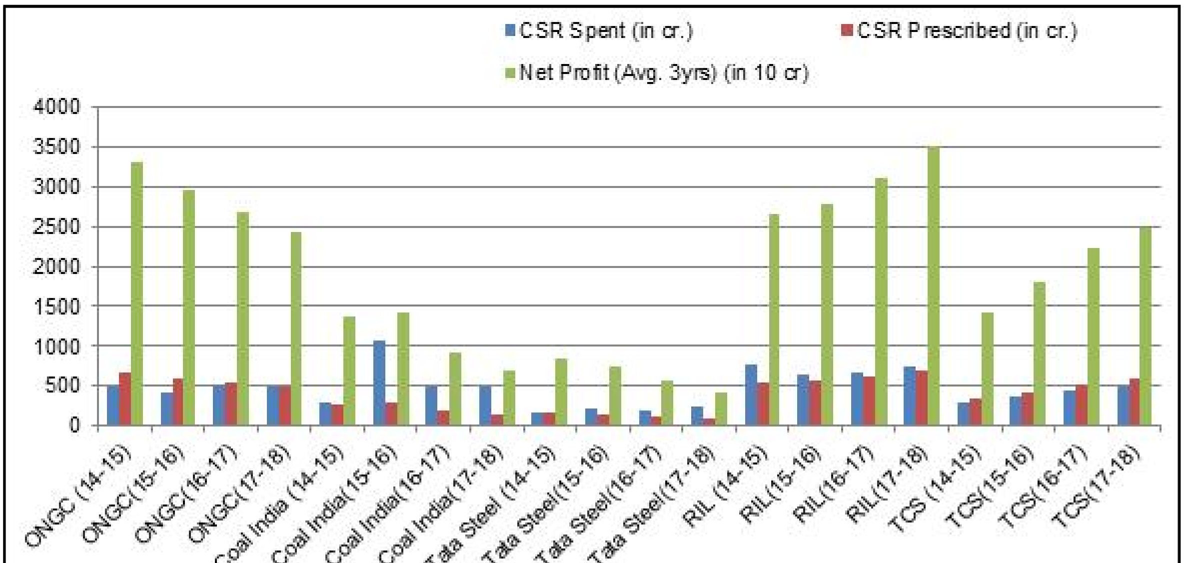

Fig. 2. CSR spent by rest 5 listed companies with highest new profit.

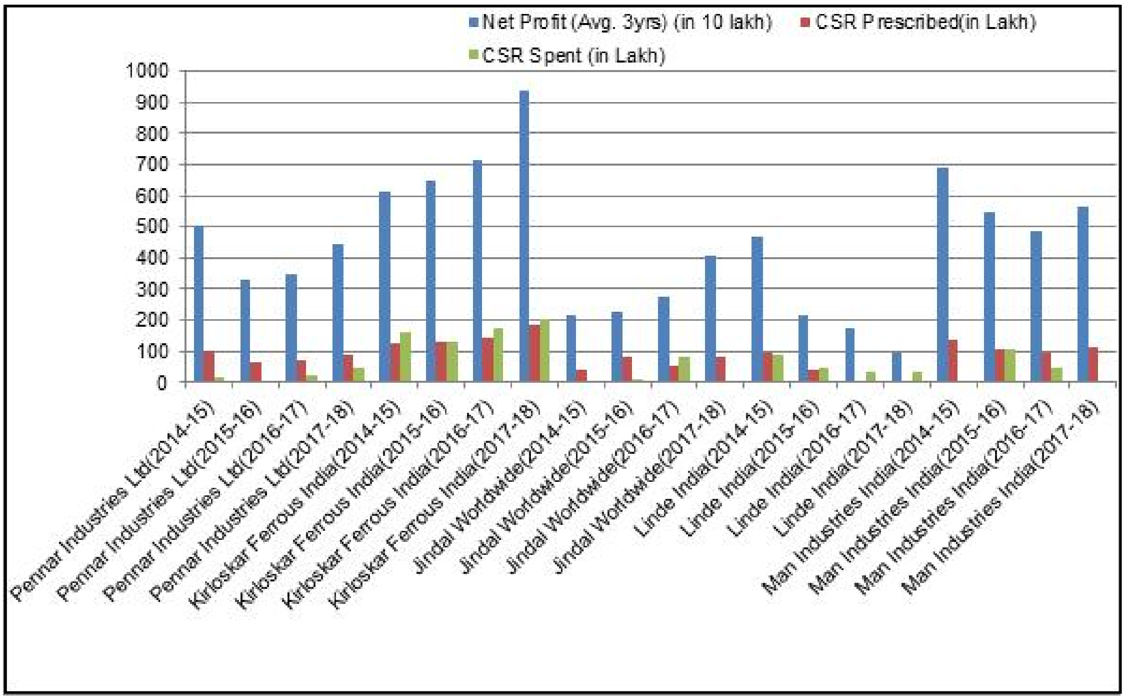

Fig. 3. CSR Spent By 5 Listed Companies With Net Profit Between 5 cr to 100 cr

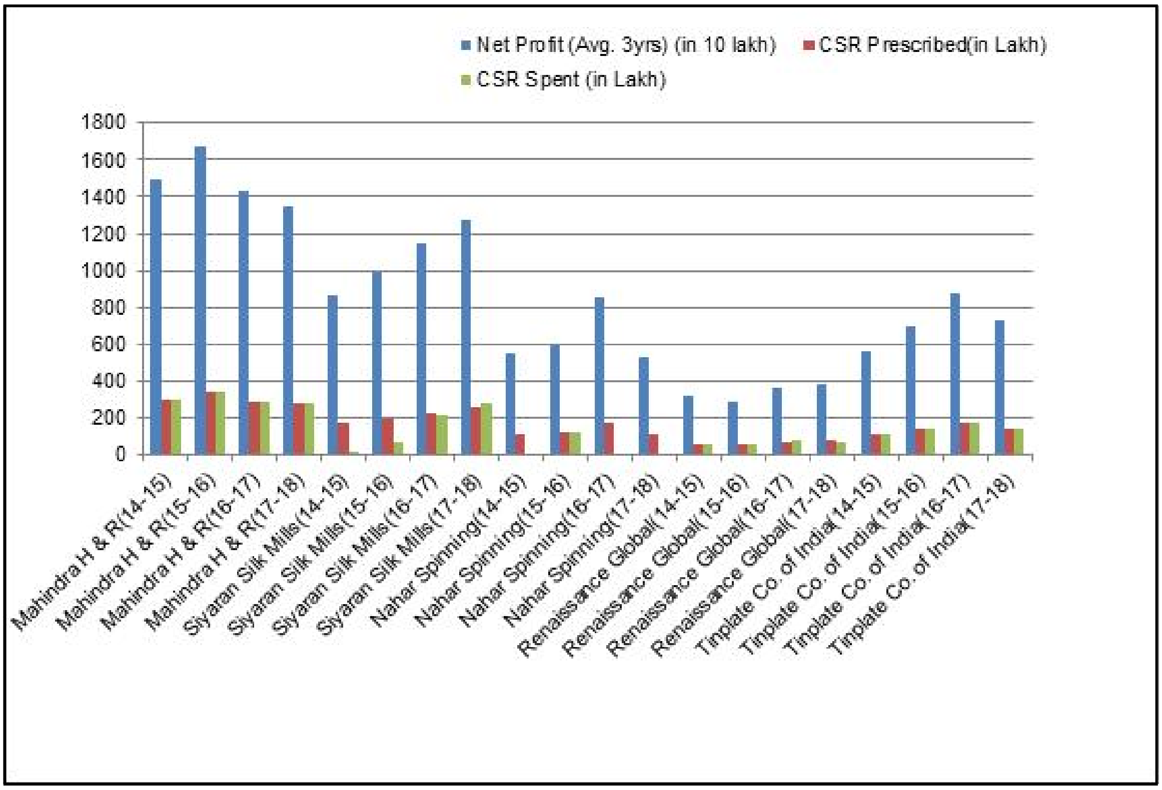

Fig. 4. CSR Spent By 5 More Listed Companies With Net Profit Between 5 cr to 100 cr

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