AN ANALYSIS OF THE CHALLENGES OF CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA; A NEW DIMENSION IN NIGERIAN CORPORATE GOVERNANCE

By

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Abstract

This study interrogates the framework of the Nigerian Companies and Allied Matters Act with regards to the evident gap of non-provision of Corporate Social Responsibility (CSR) as a duty on the part of companies in Nigeria. The study was conducted using a doctrinal method and finds that the challenge of non-compliance with CSR in Nigeria may be as a result of the perspective from which companies view CSR as a charity and not a legal duty. The analysis of data enabled review of reports on the impact of CSR in India, a forum which has established CSR as a legal obligation. It further finds that South Africa may have positioned itself to benefit from CSR interventions with its laws tailored to motivate CSR advancement in the forum. It was shown that India benefits from CSR as the fact of compliance by companies has begun impacting on India's sustainable development. The study recommends that accepting CSR as a core activity embedded into the Nigerian legal frame work will help actuate companies' economic, social and environmental responsibility towards the society. It moves beyond the India model by suggesting that companies commit to CSR directives on oath, which furnishes citizens a right to sue over infractions.

Keywords: *CAMA, Corporate Social Responsibility, Corporate Governance, Law*

Introduction

The Companies and Allied Matters Act[1] (CAMA) is a major law regulating corporate governance in Nigeria. It provides mechanisms for appointing directors of a company, removal of directors, the provisions for auditors and audit committees and the mandatory involvement of shareholders in making corporate decisions.[2] The CAMA is a tool for governance of the corporate entity in Nigeria as it stipulates guiding principles for shareholder and directorate activities. The major parties involved in corporate governance in Nigeria are the board of directors, the management and shareholders, creditors, customers, government agencies and the community at large.[3] Corporate governance is the relationship among these participants in determining the direction and performance of corporations.[4] The Organization for Economic Cooperation and Development (OECD) defined corporate governance as a set of relationships between a company's management and its board as well as shareholders and other stakeholders.[5]Accordingly, the functions of the various stakeholders is captured by the Securities and Exchange Commission Code of Corporate Governance in Nigeria (the SEC Code) which provides for

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[1] CAMA 2020

[2] C E Halliday and O Nwanya, 'Corporate Governance: A Veritable Mechanism for Combating Corporate Corruption' [2013] (5) (1), *Port Harcourt Law Journal*, 14.

[3] *Ibid*

[4] Halliday and Nwanya (n2) 6

[5] Amodu, 'CSR in Nigeria' [2020] *Research Gate* available @<https://www.researchgate.net/publication/348631125> accessed 1st August, 2023.

a balance of interest as the board is to ensure that all shareholders are given equal treatment with adequate protection for the minority. At event of an infraction, shareholders may sue personally, in a representative capacity or even by way of a derivative action as statutory remedies against abuse by controlling members of a company due to the codification of the exceptions to the rule in *Foss v. Harbottle*.[6] The codified exceptions provide the requisite mechanisms for preventing the majority from abusing their power to bind the minority. In many ways these mechanisms enable a proper regulation of companies to the extent that its obligations to the shareholders are implemented and assured. However there seems to be no express provision that protect other stakeholders such as host communities or at least empower them to sue in protection of their interest. Yet, a significant obligation of companies is the social responsibilities it owes to the society by virtue of its operation. Indeed, corporate social responsibility (CSR) has been a prerequisite for companies and institutional performance ratings.

Forum's such as the United Nations, European Union, the United States, as well as the wider business community, tend to accede to the fact that "corporate social responsibility" is a central aspect in social policy and human development.[7] It is important to mention that this policy is emerging at a period when international economic and financial organizations, even the global business system itself, are confronted with issues pertaining to ethics and humanitarian concerns. More often, corporate social responsibility arises in corporate governance discourse when the protection of shareholder interest is discussed. It appears to be the nexus between corporate governance and shareholder protection. However, CSR is a regulatory construct by which the interests of corporate executives and directors are aligned with the interests of stakeholders within the company's environment. A company environment includes the company's physical environment together with its host and any impacted communities within its area of operation. It further extends to its human environment (such as its members and employees as well as government and its regulatory bodies). Nevertheless, this aspect of company activities is neither captured in the CAMA or given the requisite legal force that should establish it as a right and not a privilege a host community enjoys. This study vividly examines the scope of CSR and its impact on societal and human development. The study examines the legal scope of CSR in India and South Africa as the basis for making a case for inculcating corporate social responsibilities into the framework of the Nigerian law. It is useful to mention that the quest to improve the welfare of citizens in India and South Africa motivated the adoption of a legally mandatory CSR approach with the hope of accelerating social transformation.

Corporate Social Responsibility

Although there is no set definition of CSR to which all agents follow, it assumes that a company is responsible for its wider impact on society, not merely the return to stakeholders. CSR is a self-regulating business model that helps a company to be socially accountable to itself, its stakeholders, and the public.[8] By practicing CSR, companies can have a positive impact on the world and enhance

[6] (1843) 2 Hare 461

[7] https://www.un.org/esa/socdev/rwss/docs/2001/20%20corporate%20social%20reponsibilities.pdf accessed 10 December, 2023.

[8] D Hess, 154

the environment.[9] CSR practices can also raise workplace morale and make a company more attractive to prospective employees, investors, and customers.[10] CSR can take the form of initiatives or strategies, depending on an organization's goals.

It must be understood that, although CSR may entail some form of local community development and corporate philanthropy, it is not all about such philanthropic gestures.

CSR might have evolved from charity but has obviously metamorphosed into modern conceptions such as: the triple bottom line of planet, people and profit;[11] the green movement[12] and advocacy for sustainable development in business and society. CSR is now said to mean the exercise of social responsibility in how corporate profits are made.

Corporate Governance

In defining corporate governance, two terms come to mind, to wit: Corporate and Governance. According to the Corporate Finance Institute, a corporate entity is created by individuals or shareholders with the purpose of operating for profit.[13] On the other hand, Governance in this context *'encompasses the system by which an organization is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance.*[14]Corporate governance, therefore, are the set of rules and mechanisms through which a corporation is guided. They are the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies, and those in control, are held to account. It is the system of rules and practices by which a firm is controlled, without which the integrity of a company and financial market is questioned. It is important to note that Corporate Governance has a special role to play in any vibrant financial market. As highlighted by the 2017 Cytonn Corporate Governance Ranking (CGR) Report, there is a strong correlation between Corporate Governance and returns on stocks of the listed entities.[15] More so, corporate governance generally refers to the way companies are governed.[16] The Adrian Cadbury Committee defined corporate governance 'as the system by which companies are directed and controlled'.[17] It essentially addresses the need for directors and managers to disclose amply and be transparent in the management of companies. Thus, it is submitted that corporate governance is a by-product of good performance by all organs entrusted with the exercise of corporate functions.

[9]D Hess, 154

[10] R Smerdon, *A Practical Guide to Corporate Governance* (3rdedn, Sweet & Maxwell, 2007) 429.

[11]Confederation of British Industry (CBI) The Responsibilities of the British Public Company (1973, CBI), cited in LCB Gower, *Gower's Principles of Modern Company Law* (4thedn, Stevens & Sons, 1979) 62, 63

[12] Branson (n 14) 54; R Mullerat 'Corporate Social Responsibility: New Trends' (2006) *American Bar Association Section of International Law* 3

[13]Corporate Finance Institute. '*Corporation*'[2022] available at: https://corporatefinanceinstitute.com/resources/knowledge/finance/what-is-corporation-overview/ accessed 1st August, 2023.

[14]O M Atoyebi, 'CAMA 2020: A Look at Nigeria's New Corporate Governance Regime' (2022) *The Nigerian Lawyer* 1.

[15] A Cytonn, '*Steps to Enhancing Corporate Governance*. (2022) available at: <https://cytonn.com/blog/article/steps-to-enhancing-corporate-governance> accessed 1st August, 2023

[16]. J E O Abugu, 'Issues and Problems in Corporate Governance in Nigeria' (2015) (6) (3) *The Gravitas Reviews of Business Governance in Nigeria*, 1.

[17]. Cadbury Adrian Report of the Committee on the Financial Aspects of Corporate Governance 1992, s.25.

Corporate Governance is concerned with practices and procedures for trying to ensure that a company is run in such a way that it achieves its objectives.

Good corporate governance thrives successfully when anchored upon some guided principles.[18] These principles are as follows: the right of shareholders, the equitable treatment of shareholders, the role of stakeholders in corporate governance, the role of regulators, disclosure and transparency, the responsibilities of the board and the role of auditors and audit committee.[19] It therefore suffices to submit that a sound system of corporate governance ensures that managers and directors of enterprises carry out their duties within a framework of accountability and transparency. However, these rules are often inadequate as they are not expansive enough to capture other viable responsibilities companies should owe to the society beyond shareholders.

An Examination of the Relationship between Corporate Governance and Corporate Social Responsibility

Corporate governance is persistently anchored on ethical norms and the need for accountability in corporate practice, while corporate social responsibility is aimed at balancing the goals of shareholders of a company and the interest of stakeholders with governance tools like business ethics, codes of conduct and dialogue with stakeholders within the community where the company carries out its business.[20] As two separate and isolated mechanisms, one deals with corporate decision making and the other with people friendly business strategies. Furthermore, there is now an evolving interplay between corporate governance and corporate social responsibility. Therefore, these concepts are now complementary and not concurrent. Accordingly, corporate governance is portrayed as the mechanism where individuals who make financial contributions to companies assure themselves of obtaining returns on their investment. Corporate social responsibility establishes a business strategy which is used to make the ultimate goals of companies more achievable and transparent. It accentuates on the responsibility of companies towards their host communities and the environment, and adequate consideration is placed on the interest groups when making long term business decisions.[21] This convergence has gradually extended the narrow meaning of corporate governance. It now extends from the company's focus on corporate ethics and transparency, to include the accountability of companies to their host communities in terms of short- and long-term business decisions. To this effect, Dima Jamali opined thus:

The broader concept of CG which entails due regard to all shareholders and ensuring that companies are answerable to all their key stakeholders has extended to the stakeholder approach of CSR which entails that companies are the core of a complex web of stakeholder relationships and have an obligation to these different stakeholders.[22]

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[18]. P. E. Oyong, 'An Analysis of the Legal Framework for Corporate Governance in Nigeria' (2009) *Nigerian Law Review Journal*, 118.
[19]. D. A. Guobadia and E. Azinge, 'Globalization, National Development and the Law' (2015) 162.
[20]O A Onwumere, 'The Evolving Interplay between Corporate Governance and Corporate Social Responsibility and its Legal Implications on Multinational Companies' (2018) (10) (1), *Journal of Corporate Governance*, 2109-2110.
[21]*Ibid*, 2111.
[22]D Jamali and others, 'Corporate Governance and Corporate Social Responsibility Synergies and Interrelationships' (2008) (16) (5) *Corporate Governance an International Review*, 447.

It is therefore submitted that the concept of CSR overlaps with corporate governance, ethics, accountability and responsibility to the society. It is a corporate business strategy whereby businesses engage in continuous, responsible activities that point to its good intentions as a corporate citizen.[23]Essentially, CSR is the deliberate inclusion of public interest into corporate decision making and the honoring of a triple bottom line: People, Planet and Profit.[24]Thus, the duties of a director now extends from acting in the best interest of the company to include the company's business relationships with suppliers, customers, operations on the community, environment and standards of business conduct.[25] However, this is not the position in Nigeria, as a director of a company is merely under the duty to act in the best interest of the company, company's employees in general as well as the interest of members[26] excluding the interest of other major stakeholders such as the community in which they have established business.

Corporate Social Responsibility under Nigerian's Corporate Governance Law

CSR is moving from a discretionary company activity to a social demand backed by law in order to strengthen its observance and applicability. For instance, India is the first country in the world to make corporate social responsibility (CSR) mandatory, following an amendment to the Companies Act, 2013 in April 2014. **S**ection 279 (3) and (4) of CAMA[27] enjoins directors to act in the best interests of the company as a whole, ensuring that the interests of the company's employees are also considered. These provisions include clear references to consideration of other interests apart from shareholder interests, showing that Nigerian primary corporate law takes cognizance of stakeholder protection.

However, the value such corporate stakeholders may derive from these sections in relation to the safeguarding of their interests in the running of the company is another question. For instance, having sought to protect an important stakeholder group such as employees in section 279(3) and (4) of CAMA (now section 305(3) and (4) of CAMA 2020), the same legislation immediately weakens the efficacy of those provisions under sub-section (9)[28] to the effect that, even if the corporate executives do not behave responsibly in safeguarding stakeholder interests, only the "company" can complain. The issue is that these sections of the CAMA, constitute an adoption of the shareholder primacy-centric common law position of what is considered to be the "company" or the "interest of the company" in circumstances such as this. The "company" is assumed to mean members or shareholders as a whole, and the best interest or success of the company is taken to mean what is beneficial to the economic interests of the shareholders without considerations for the society or remote communities where the company is situated. In relation to corporate disclosure in financial statements, Nigerian primary corporate legislation also focuses on the shareholder primacy model without provision for the consideration of important stakeholder interests (such as impacts on community life or the environment)

[23]A Kannike, and Others, 'Reflections on Corporate Social Responsibility' (2018) (1) (2) *Redeemers University Law Journal, RUNLAWJ,* 636.
[24]Kannike, and Others, 637.
[25] UK Companie Act 2019, s.172(1) (c)-(f); Companies Act of India 2013, s. 166(2).
[26] CAMA 2020, s. 305(4).
[27] CAMA 2020, s 305(3), (4)
[28] CAMA 2020, s 305 (9)

as there are no provisions for non-financial corporate disclosures The provisions of section 305(3) of CAMA 2020 (enjoining directors to have regard, in addition to the interests of the shareholders, to the impact of the company's operations on the environment in the community where the company operates) is commendable. Nevertheless, it is submitted that the holistic review of relevant provisions on the legal status or obligations of directors and corporate reporting obligations in Nigeria's corporate legislative framework shows that there will not be any substantive change from the previous status quo. The effect of the provisions of section 305(3) and (4) of CAMA 2020 appears, at best, a transition from the crude adoption of the traditional shareholder primacy model. It could be seen that the provisions of sections 283(1) of CAMA and 305(3) of CAMA 2020 allow directors to pursue CSR and protect shareholder interests in avoiding unnecessary risk to the company's assets. However, while this may be considered impressive, it is nothing but a mere conjecture and is of no moment. Without a clear legislative prescription foisting CSR on companies as a legal duty which extends to communities, it will be difficult to convince any judge that corporate executives have a legal duty actually to safeguard a wider stakeholder interest. The creative arguments set out above will therefore continue to offer no real safeguard for the interests of host communities. Even if CSR was to be seen from the perspective of charity, from the intendment of CAMA 2020, the issue of corporate and charitable giving has taken a different form.[29] A business is only typically allowed to engage in philanthropy and charity if doing so will definitely benefit the company and advance the success of all its shareholders.[30] Otherwise corporate law prohibits corporate gifting since it is interpreted as an unauthorized use of company funds. Yet corporations are said to have all rights and powers of a natural person with full capacity including the right to make donations under section 43 of CAMA 2020. These contradictions compress the prospects of CSR as business managers may wish to donate to communities from company funds but may be hindered as doing so solely for charitable purposes may not be considered beneficial to the company or may amount to an unnecessary depletion of capital that would have otherwise been accessible to shareholders as profits.[31] Furthermore, CAMA 2020 does not seem to offer enough ideological backing that is favorable to good CSR efforts in Nigeria. CAMA gives relatively little considerations to company responsibilities towards stakeholder groups like, employee, creditors, local communities and suppliers.[32] The combined implications of s 305 (3) and (5) further supports the claim that CSR has supported very little in Nigeria particularly, in terms of community development intervention. Corporate decision makers appear to be obligated under subsection 4 to take into account and balance employee- related issues and interest without further considerations for welfare of host communities. Indeed, the combined effect of section 305 (3) and (5) reveal little support for CSR particularly community participation in Nigeria. According to section 305, corporate directors only owe responsibilities to the company; they are not legally obliged to take cognizance of any other actor. What is obtained in practice is that directors have construed interest of the firm to refer exclusively to shareholders interest as a primary obligation.[33] Thus the idea of shareholder supremacy in Nigeria could

[29] CAMA 2020, s43(2)
[30] The English Company Act 2006, s172
[31] M Wolf, 'Sleep Walking with the Enemy: Corporate Social Responsibility Distort the Market by Deflecting Business Enterprise from its Primary Role of Profit Generation' *Financial Times* (Tuesday, May16th, 2001)
[32] CAMA 2020, s 305, 357, 358
[33] N Amodu. 'Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria' (2017) *Journal of African Law* 105.

hinder CSR efforts especially since the community is not specifically listed as an interest directors should take into account. Thus, directors will continue to prioritize the interest of shareholders with little or no concern for the community that is impacted by their operation. It may be possible to require corporate social responsibility for the community and ensure that the company law expressly recognizes the communities' interest especially in vulnerable areas. It is by such mandatory craft that compliance with sustainable business practices which includes CSR will be assured. To further strengthen the prospect of compliance, Nigeria may provide that companies attest to a strict compliance upon incorporation or registration in order to make infractions of the law on CSR an offence. Thus, the non-compliance with CSR legal provisions becomes an offence as a failure to perform a task or fulfill an obligation required by law and under oath. Citizens can then acquire a right to sue a defaulting company on a wider interest.

Although there are arguments against CSR prominent of which is the issue of triple taxation, but same appears extremely protective of shareholders beyond any other interest. It is argued that profits of companies are taxed under the corporate taxation scheme which reduces the net profit available for internal distribution. More so, there is a dividend tax which must be withheld before dividend payments. As such spending under CSR is then considered to be a third tax regime which raises the tax threshold. Indeed, such situation may dowse the spirit to invest in any entity. However, the cumulative good which a mandatory CSR may bring to mostly developing economies such as Nigeria should be put in perspective. More so, the non functionality of Governments in local areas further strengthen the need for private sector intervention in improving the economy of local sections of the country and sustainable development. Again, investors must take into account all legal and social obligations it owes to any society and review its prospects on profits. This is what is referred to as feasibility study,[34] an exercise which assures business entities that its investments are secured and sustainable. Thus companies that thrive irrespective of tax regimes in a given society may not have been adversely affected by such tax regimes. In fact, in practical terms multinational companies often export capital derived from a host country without impacting such societies. Very often, the activities of such companies may rather be destructive to the society even as the companies make profits enough to build up their nationalities.[35] Perhaps the above facts are to be generally considered in other to balance the respective interest of players in the commercial circle for better corporate governance. It is recommended that the Nigerian government consistently review tax structures to see where to be flexible in other to accommodate and promote CSR activities particularly in host communities. It is better to sway to the side of private sector intervention as this may be more consistent and impactful on communities at local levels than government intervention.[36] Ordinary it may be generally useful to consider CSR initiative as a tool

[34] A feasibility study is a preliminary exploration of a proposed project or undertaking to determine its merits and viability. The study expertly takes on an independent assessment that examines all aspects of a proposed project, including financial, economic, legal, technical and environmental considerations. See Simplilearn at https://www.simplilearn.com/feasibility-study-article. last updated on Oct 19, 2023.

[35] CSR became a prominent issue in Nigeria in the 1990's following series of human and environmental rights infringements involving companies in the oil and gas sector of Nigeria. More so multi-national corporations have been taken to be the drivers of neo-colonialism. See Udensi Eugene Udoka "The Impact of Multinational Corporations in the Nigerian Economy" (2015) International Journal of Social science and Humanities Research, Vol 3, Issue 2, pp 107-115.

[36] Since Nigeria's return to democracy in 1999, there has been a decline in the delivery of social services at local levels even as it is constitutionally guaranteed. Health services education and portable water is still inadequate and public infrastructure is either unavailable or poorly maintained. The lack of government system continues to be a significant hindrance to good

which promotes the image of a company as it encourages directors to govern the corporation in the interest of the wider stakeholders and not merely for increasing shareholder value. The opportunity for companies to contribute towards social transformation will provide gains for the company as it enhances the ease of doing business in communities that then become more accommodating rather than hostile.[37] It may further expand the capacity of the company, making it more attractive to potential shareholders. On the other side, it benefits the government and the communities as private sector interventions assist in development and per capita gains.

Corporate Social Responsibility under South African Corporate Governance Law

Ultimately CSR is not specifically stated in the South African Companies Act of 2008, however section 72 (4) (a) of the Act,[38] without specifically referring to the term CSR, made an attempt to incorporate the idea of CSR in company's governance structure.[39] Section 72 (4) (a) authorizes the Minister of Trade and Industry to prescribe in terms of a company's annual turnover, the size of its workforce and the nature and extent of its activities to have a social and ethics committee,[40] otherwise known as CSR committee.[41] Essentially, these measures could be regarded as an attempt by the government from an external position to put pressure on the private sector to operate in a socially responsible manner. Thus, specific legislation exists in South Africa which tend to compel directors to take the interest of certain stakeholders into account such as the Broad Based Black Economic Empowerment Act of 2003 (BBBEE Act)[42] and the Mining Charter 2016. The aforementioned Acts do not only aim to correct the racial imbalances in South Africa but strive to encourage social investment and to promote community development through various means involving socio-economic growth. The BBBEE Act takes from the equality clause of the Constitution which provides that everyone is equal before the law, a fact through which it seeks to address the systematic exclusion of the majority of South Africans from participation in the economy.[43] The Act ensures that each company takes responsibility for its efforts in the society in which it operates. The Act promotes CSR initiative as it encourages directors to govern the corporation in the interest of the wider stakeholders and not merely for increasing shareholder value. It is an important tool for providing directors with a greater clarity on how they can contribute towards social transformation through business in South Africa. In addition, compliance with BBBEE Act will indirectly benefit directors in that a high score compliance with the above-stated points will result in easier offers to do business in South Africa and particularly with public entities and the state. South

governance at local levels. It is only in theory that the essence of government which is to bring democracy closer to the people is founded. In Nigeria democracy may not have been fully attained as even governors mostly fail to conduct local government elections, thereby eroding democratic governance. See Idayat Hassan "Local Governance in Nigeria: An Unsettling State of Affairs" (2020) available at https://www.urbanet.info/local-governance-nigeria-unstlling-state-of-affairs/ accessed 24th December, 2023.

[37] See the Guardian Newspaper report on threats over renewed hostilities in the Niger Delta due to adverse Government and Multi-National Companies interest in the region. https://guardian.ng/news/niger-delta-militants-threaten-renewed-hostilities/amp/ accessed 24 December, 2023.

[38] South African Companies Act, 2008

[39] H J Kloppers, 'Driving Corporate Social Responsibility (CSR) Through the Companies Act: An Overview of the Role of the Social and Ethics Committee' (2013) (1) PER/ PELJ 166 at 168.

[40] South African Companies Act, 2008, s 72(4) (a)

[41] H J Kloppers (n 52) 167

[42] Broad-Based Black Economic Empowerment Amendment Act 2013

[43] Irene- Marie Esser and Adriette Dekker, 'The Dynamics of Corporate Governance in South Africa: Broad Based Black Economic Empowerment and the Enhancement of Good Corporate Governance Principles' (2008) *Journal of International Commercial Law and Technology* (3) (3) 168

Africa through these instruments may have set a standard and positioned itself to benefit from the gains of CSR in a society.

Corporate Social Responsibility under Indian Corporate Governance Law

The Indian Companies Act, 2013 provides for CSR under its section 135. Thus, it is mandatory for the companies covered under section 135 to comply with the CSR provisions in India. The provision of CSR applies to every company, holding company, subsidiary company and foreign companies. The role of the Board of Directors under the Indian Companies Act, 2013 is to consider the recommendations made by a CSR Committee and approve the CSR policy for the Company. The Board must also ensure that the outlined recommended activities and intervention must be undertaken as mentioned in the policy. Again, the Board of Directors shall make sure that the company spends in every financial year, a minimum of 2% of the average net profits made during the 3 immediately preceding financial years in pursuit of its CSR policy. Where a company has not completed 3 financial years since its incorporation, the average net profits shall be calculated for the financial years since its incorporation. The CSR framework in India is further strengthened by the requirement for a board to disclose the composition of the companies CSR committee as well as its targets. In fact, Companies in India are mandated to spend a minimum of 2% of their net profit over the preceding three years as CSR.[44] The CSR provisions also apply to a company's registered for charitable purposes under Section 8 of the Companies Act, 2013. Section 135(1) of the Act then states that every company having the specified net worth, turnover, or net profits must establish a CSR committee. Thus, section 8 must also establish a CSR committee and comply with CSR provisions when it meets the specified net worth, turnover, or net profits.[45] Further, section 135(5) of the Act provides that the company should give preference to local areas around where it operates. There is also an attempt to establish clarity with regards to the scope of CSR within which a company is to advance interventions in a locality. Rule 2(1) (d) of the Companies (CSR Policy) Rules, 2014 excludes the following activities from being considered as eligible CSR activity:

i. Activities undertaken in pursuance of the normal course of business of the company.

ii. Activities undertaken outside India, except for training of Indian sports personnel representing any state/UT at the national level or India at the international level

iii. Contribution of any amount, indirectly or directly, to any political party under Section 182 of the Act

iv. Activities benefiting employees of the company

v. Sponsorship activities for deriving marketing benefits for products/services

vi. Activities for fulfilling statutory obligations under any law in force in India[46]

[44] Companies Act of India,2013, s 135(1)
[45] Companies Act of India,2013, s 8
[46] Companies (CSR Policy) Rules, 2014, r 2(1)(d)

The government monitors the CSR provisions compliance through the disclosures made by the companies on the MCA portal. The government can initiate action for any violation of CSR provisions against the non-compliant companies after due examination of records. The average net profit to determine the spending on CSR activities is to be computed as per the provisions of Section 198 of the Act and be exclusive of the items given under Rule 2(1) (h) of the Companies (CSR Policy) Rules, 2014.

Today, India is one of the emerging economies. Although the poverty level in India is substantial as the people living there primarily connect to rural regions. Yet the 2013 Companies Act of India which mandates private corporations to join efforts with the public sector in paying yearly contributions for CSR may have started making impact on the polity. Nowadays, India's corporate world focuses on sustainable development through CSR funding[47] which in India provides critical development services like education, environment, and rural development, helping India's economic growth. The funds are essential for education, health, and rural development.[48] For instance, CSR initiatives under GAIL Ujjwal aided in providing quality education, by aiding underprivileged students in rural and urban slums, infrastructure support in Government schools and support for Atal Innovation Mission of Government of India in Assam and Madhya Pradesh. The project Gail Utkarsh, was reported to have extreme impact on the education and housing sector of India.[49] CSR in education has a role in reducing the skills gap through direct intervention in areas that need attention. CSR investment in education in India has produced more nuanced and detailed results. Interventions driven by outcomes have begun to replace the rather misplaced philanthropic driven interventions. Public sector businesses have also made a substantial contribution to education. Although their contribution to education may be relatively small, public-sector enterprises have invested in various causes, strengthening communities surrounding their remote activities and building more than simply schools.[50]

Conclusion and Recommendations

This study shows the importance of CSR in the developmental plan of societies using India as a case study. It draws lessons from India on its mandatory CSR requirement and how same positively impacts on the sustainable development goals of India. It was shown that CSR practices are not clearly legislatively prescribed by the CAMA 2020 as it is expressed in the Indian Companies Act, 2013. Thus, the non-compliance with CSR requirement in Nigeria is due to the fact it is presumed a charitable venture and not a legal obligation. Yet the gains of CSR outweigh any consideration for which it is not made a duty on the part of operative companies in an economy. It was shown that the argument on triple taxation may not be tenable given to the prospects of sustained businesses in Nigeria after weighing the cost and profits. Nevertheless, it is important to take into account, the interest of players in the

[47] Sharma, Seema G. (2009) Corporate Social Responsibility in India: An overview. Int'l Law 43: 1515 (Google Scholar).
[48] Abbas, Jaffar, Shahid Mahmood, Hashim Ali, Muhammad Ali Raza, Ghaffar Ali, Jaffar Aman, Shaher Bano, and Mohammed Nurunnabi (2019) 'The Effects of Corporate social responsibility practices and environmental factors through a moderating role of social media marketing on sustainable performance of business firms. Sustainability 11: 3434. (Google Scholar).
[49] https://www.gailonline.com/CSRIndex.html accessed 19 December 2023.
[50] Mishra, Lokonath (2021) "Corporate social responsibility and sustainable development goals: A study of Indian companies" Journal of Public Affairs, 21: e2147.

commercial circle in other to balance the issue of taxation against imposed social responsibilities on companies. The advantages of CSR may be properly harnessed by the companies, government and communities if by legislation; concerns go beyond the shareholder-oriented approach into accommodating community interest in corporate governance. Thus, it is important to review sections 279, 314 and 315 of the Nigerian CAMA as the sections are to the effect that the interests of shareholders should be held paramount by directors and state regulators with little or no regard for societal or community concerns regarding companies' activities. It is submitted that what is obtainable in the CAMA is a director and shareholders interest-based CSR. CAMA 2020 does not permit a company to freely utilize its resources to undertake CSR to the benefit of host communities and the society. CSR under the CAMA is a myth than reality and it is important to re-model the provisions to be at par with the Indian example.

More so, Nigeria may set a new dimension if by statutes, companies upon registration are required to attest on oath the willingness and commitment to CSR as a legal duty. This may change the dynamics of corporate governance as the matter of CSR implementation will be easily monitored. This way, CSR may not be seen as a charity but a mandatory obligation on the part of companies of which its infraction may be redressed by legal action based on citizen interest suits.