
CORPORATE SOCIAL RESPONSIBILITY IN INDIA: LEGAL OBLIGATION OR MERE FORMALITY?

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ABSTRACT

A significant turning point in Indian corporate law occurred when Section 135 of the Companies Act, 2013, made CSR mandatory. In theory, qualified businesses must donate 2% of their average net revenues to designated charitable charities. However, in practice, people continue to question whether this regulation has accomplished much beyond merely adding a new line item to business accounting. This article examines the basis of the CSR law, tracks its evolution through many modifications, and examines compliance statistics to determine whether Indian businesses have truly embraced social responsibility or have only worked out how to check the appropriate boxes. I contend that the current CSR system is precariously caught between being a financial need and a moral obligation, and that this contradiction wasn't accidental and is creating serious issues utilizing legislation, court rulings, legislative debates, and actual statistics. Finally, it suggests administrative and theological changes that may give the mandate real significance.

Keywords: Corporate Social Responsibility, Companies Act 2013, mandatory CSR, Section 135, compliance, India, corporate law, social obligation.

I. Introduction

Section 135 of the Companies Act, 2013, makes corporate social responsibility (CSR) a legal duty with a minimum expenditure amount, something that no other nation had done previously.¹ Establishing a CSR committee, developing a CSR strategy, and allocating at least 2% of their average net income to the activities listed in Schedule VII are now requirements for businesses that surpass certain size levels.² In a nation where the government has traditionally found it difficult to provide sufficient welfare on its own, the legislators' objective was quite obvious: to get private funding to solve public needs.³

However, a persistent issue persists 10 years after the statute was approved. Indeed, overall CSR expenditure has increased, and large corporations are adhering more often.⁴ However, detractors from academia, civil society organisations, and parliamentary committees claim that those spending figures conceal more serious problems, such as funding going to a small number of industries, prioritising short-term, visible projects over long-term effects, poor monitoring of actual outcomes, and, until recently, virtually no real financial repercussions for noncompliance.⁵ The legislation has undergone many amendments, each of which tightened procedural regulations without addressing the crucial issue of what businesses really do with their CSR funds.⁶

I will solve this problem piece by piece. The theoretical foundation for CSR discussions is outlined in Section II. The modifications and the enforcement process are explained in Section III. The structural issues that make the system seem more like a box-ticking exercise than a genuine commitment are examined in Section IV. Section VII concludes, whereas Section VI offers improvements.

¹ Mandatory CSR, as introduced under the Companies Act 2013, represented a global first in legislating minimum CSR expenditure: see Beloo Mehra, 'Mandatory CSR in India: The Road Ahead' (2014) 56(1) *Indian Journal of Industrial Relations* 1, 4.

² Companies Act, 2013, s 135(1).

³ Ravi Shanker Prasad (then Minister of Law and Justice), Lok Sabha Debates, 17th Session (18 December 2012), col 712.

⁴ Ministry of Corporate Affairs, Annual Report on CSR (Government of India 2022–23) 14.

⁵ Priyadarshi Dash and Shridhar Dash, 'CSR in India after Companies Act 2013: An Analysis' (2019) 9(1) *Accounting and Finance Research* 45, 50.

⁶ Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

II. Theoretical Framework: Locating CSR in Corporate Law

A. The Classical View and Its Critique

Any further concept of CSR started with a famous quote of Milton Friedman that the only social responsibility of a company is to maximize profits. Friedman was making an overt argument as to who has the right to spend money, and not just provocative. Corporate executives are effectively spending other people's money according to their own ideals when they reroute shareholder cash to social causes; this seems more like taxation than typical market transactions. Whether or whether this is convincing, it makes the stakes clear: any required CSR system must respond to the accusation that it transforms private property into quasi-public uses without complete legal support for the distributional decisions involved.

The pyramid model offered by Carroll provided a better idea. Economic responsibility comes last, followed by legal compliance, ethical duties and philanthropy is the last, but the top of the list. In force, the Companies Act of India transforms what was optional philanthropy of Carroll into legally mandatory—with an added minimum and committee requirement, and (since 2019) penalties. The strange aspect of this action is that it has transformed voluntary generosity into a budget category and this brings a pertinent question, can something that has been bought about with a stick still have the moral underpinning that CSR supporters purport?

B. Stakeholder Theory and the Indian Context

The stakeholder theory proposed by Freeman is more flexible. It states that companies should not only be accountable to the shareholders, but to all persons impacted by their operations which include employees, communities, suppliers, the environment. In this light, looking at Section 135, it is an effort to ensure that these companies do fulfil these stakeholder responsibilities, as the market alone is not keen on them. The stakeholder argument is even more powerful because of India and its development issues which are vast populations of individuals with inadequate healthcare, education or clean water. The adverse effects which a shareholder-only company would overlook are not theories but real life of millions of Indians.⁷

Simultaneously, a mandatory spend mechanism is not necessarily supported by the theory of stakeholders. It is possible that a company may be intensely stakeholder-driven by supply chain

⁷ Schedule VII to the Companies Act, 2013, item (x): rural development projects.

management, by employment rules, and by involvement with communities without channelling two percent of earnings to Schedule VII tasks.⁸ My fundamental question under consideration is, whether the strategy of India that requires companies to pay a certain amount of money to certain activities is effective in bringing about true care to the stakeholders or is merely a mere superficial compliance, rather than actual commitment.⁹

III. The Statutory Framework and Its Evolution

A. The Original Mandate under Section 135

Section 135 applies to companies that meet any of these criteria: net worth of ₹500 crore+, turnover of ₹1,000 crore+, or net profit of ₹5 crore+ in any financial year. Such companies should establish a Board CSR Committee, develop a CSR policy, and invest at least 2% of their average net profits of the last three years.¹⁰ The phrase endeavour to spend caused much controversy in the beginning. Most companies took it as optional as opposed to mandatory and such a view appeared reasonable because there were no punitive measures in case of failure in the initial stages.¹¹

The list of what qualifies as CSR work, including fighting hunger, supporting education and healthcare, protecting the environment, and supporting rural development, is on Schedule VII. The list was deliberately wide-ranging and the government circulars continued to make it bigger to encompass disaster relief, sports promotion, support war widows and funding of government-backed incubators.¹²

B. Amendments and Tightening of the Regime

The 2019 Amendment transformed in two significant ways. First, it introduced sub-section (6), which compelled companies to transfer unspent CSR money to a separate account within 30 days of the financial year ending, followed by the transfer of the same to a government fund (in the event of not being utilized within three years). Second, real penalties were added in sub-

⁸ Schedule VII to the Companies Act, 2013 (as amended by the Companies (Amendment) Act, 2016).

⁹ Payal Mehra and Vinod Kumar, 'Decoding the Intent Behind CSR in India: Beyond the Spend' (2020) 7(3) Asian Journal of Business Ethics 201, 208.

¹⁰ Companies Act, 2013, s 135(5).

¹¹ Companies Act, 2013, s 135(5) proviso: where a company fails to spend the prescribed amount, it shall specify reasons therefor in its Board report.

¹² Schedule VII to the Companies Act, 2013, item (x): rural development projects.

section (7): up to twice the unspent amount or 1 crore (whichever less) plus up to three years imprisonment of responsible officers in certain instances. This was a shift-the law could not be logically viewed as fair advice anymore.

The Amendment Rules of 2021 introduced additional procedural requirements: the implementation of larger CSR projects must be assessed in terms of impacts, the registering agencies are to be registered, and annual action plans are to be introduced. These developments reveal that Parliament has been shifting towards becoming a real system of compliance rather than being a voluntary aspirations system. Whether such architecture yields substantive social value is another question.¹³

Table 1: Key Legislative Milestones in India's CSR Regime

Year	Legislative/Regulatory Instrument	Key Change
2013	Companies Act, 2013, s 135	Mandatory CSR spend introduced; CSR Committee required
2014	CSR Policy Rules, 2014	Procedural rules for CSR implementation specified
2016	Companies (Amendment) Act, 2016	Schedule VII activities expanded
2019	Companies (Amendment) Act, 2019	Penal provisions inserted; unspent funds mechanism added
2021	CSR Policy Amendment Rules, 2021	Impact assessment mandated; agency registration required
2022	SEBI BRSR Framework	Sustainability reporting extended to top 1000 listed entities

¹³Companies (Corporate Social Responsibility Policy) Rules, 2014 (as amended up to 2021), r 4.

IV. Compliance Data and the Reality of Enforcement

A. Aggregate Spending Trends

Our best compliance data is the annual CSR reports prepared by the MCA. According to the 2022-23 report, approximately 17,000 companies have submitted CSR reports, with an aggregate of around ₹26,210 crore spent on the same, the highest amount spent on the same since the mandate was introduced.¹⁴ That's a big jump from the ~₹10,000 crore spent in 2014-15. However, that nominal growth must be put in perspective, the corporate profits have also increased, and the 2% level is applied to a larger base today.¹⁵

What is more disclosure is the distribution of the money. The largest shares are made by education, healthcare and rural development, however, even in the given categories the quality and long-term efficiency of the projects are differing drastically.¹⁶ With the existing law, a company that gives a donation to an existing hospital or school fulfils its CSR requirement as well as one that gives donation to a long-term community health worker program- even when the latter is likely to have a lot more actual effect. The legislation does not make a distinction between these methods.¹⁷

B. Non-Compliance and Its Consequences

Prior to 2019, the lack of compliance resulted in reputational losses and the need to justify it in your Board report, but no financial penalty. It is not surprising that this explanation was accepted by many companies, in particular, the mid-sized ones with less robust compliance teams. According to the findings of the High-Level Committee on CSR (2018), approximately 18% of the companies that should have spent the 2% did not do so in the last year, and 8% of the companies that should have spent the 2% instead spent less without reasonable reasons.¹⁸

The 2019 amendments turned the game around, yet there was scanty enforcement data in the first two years. MCA has not published any prosecution figures in detail thus it is hard to

¹⁴ Ministry of Corporate Affairs, Report of the High Level Committee on CSR (Government of India 2018) 22.

¹⁵ *ibid* 16.

¹⁶ National Foundation for Corporate Governance, Status of CSR in India: A Sectoral Analysis (NFCG 2023) 19.

¹⁷ Puja Pande, 'Gaps in CSR Implementation in India: An Empirical Study' (2020) 11(2) International Journal of Social Economics 189, 196.

¹⁸ Ministry of Corporate Affairs, Report of the High Level Committee on CSR (Government of India 2018) 22.

establish whether the new penalties are serving the purpose of deterring non-compliance. What becomes evident is that the unspent fund transfer mechanism has introduced an additional administrative burden: companies that do not use CSR funds in three years must give it to a government-approved fund, basically losing the right to decide how to spend the funds allocated to them.¹⁹

Table 2: CSR Spending Overview, Selected Years

Financial Year	No. of Companies (Approx.)	Total CSR Spend (Rs Crore)	Average Spend per Company (Rs Crore)
2014–15	~5,000	10,065	~2.01
2017–18	~12,000	15,239	~1.27
2020–21	~15,000	21,691	~1.45
2022–23	~17,000	26,210	~1.54

Source: Ministry of Corporate Affairs, CSR Annual Reports (various years)

V. Structural Tensions in the Current Regime

A. The Formality Trap: Spending Without Substance

The greatest criticism that has continued to be directed at the CSR system in India is that it is a reward system, rather than an impact system.²⁰ The 2% marker is a measure of money flow and not of social good. All that a company needs to do legally in order to meet the law is to write a check in the correct amount- it is not obligatory that the project will actually benefit anyone. The 2021 mandatory impact assessment only includes projects with a value of ₹5 crore

¹⁹Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, r 4(6): unspent CSR amounts not related to ongoing projects must be transferred to a fund specified in Schedule VII within six months of the financial year end.

²⁰ Renu Arora and Naveen Kumar, 'Board Oversight and CSR Compliance in Indian Companies' (2022) 23(1) Journal of Indian Law and Society 77, 85.

or above and thus smaller projects go unnoticed.²¹

This poses what I would term a "trap of formality: businesses put enormous effort in locating viable projects, securing Board approval, filing documents, and agency registration, meanwhile the tangible social impact remains unquantified and arguably becomes subordinated to the mere process of ticking compliance boxes. An empirical study of the application of CSR in five major industries in India by Pandey revealed that less than thirty percent of sampled firms had performed some type of pre-activity need assessment, and less than twenty percent had performed post-activity assessment.

B. Geographic and Sectoral Concentration

In India, the CSR money is concentrated in states where there is a large industry-Maharashtra, Gujarat and Karnataka receive disproportionate amounts. In the meantime, the worst states in terms of social needs, Bihar, Jharkhand, Odisha receive much less. This isn't coincidental. Given that there is no statutory obligation to invest in underserved locations, businesses are naturally inclined to invest in places they already have operations- it is logistically convenient and more visible.²²

The same clustering is observed with the sector distribution of Schedule VII activities. Combined education and healthcare collectively and regularly spend more than half of all CSR spending, and disaster management and environment sustainability take up a good part of the other half.²³ Schedule VII leaves much room to a variety of activities, yet market and reputational incentives will guide corporate focus towards activities that are legible, visible, and easily conveyed to the shareholders and consumers.²⁴ This should not come as a surprise, yet it begs the question as to whether the legal framework is actually doing anything of meaningful difference than what the marketplace of corporate reputation would have done on its own.

²¹ Seema Miglani and Sanjeev Kapoor, 'Corporate Social Responsibility in India: Mandatory or Voluntary?' (2015) 4(2) *Journal of Commerce and Accounting Research* 29, 33.

²² Prashant Sharma, 'CSR and Development: The Indian Experience' (2019) 3(2) *Journal of Law and Social Sciences* 44, 51.

²³ Ministry of Corporate Affairs, CSR Annual Report 2022–23 (n 11) 22.

²⁴ Ganguly (n 32) 124.

C. The Board Committee Problem

Section 135 requires a Board CSR Committee with at least one independent director. Recommending CSR policy, approving budgets and overseeing the implementation is the work of the Committee. Practically, however, most CSR committees merely rubber-stamp recommendations of the management.²⁵ In their report on CSR oversight at the board level by thirty-five companies listed on the BSE, Arora and Kumar discovered that the CSR committees convened an average of once annually, as compared to audit committees that convened thrice or four times annually. The company would often have its finance or legal department create agendas papers to CSR committee meetings as opposed to having persons with social development experience create them.

What this creates is a structural incompatibility between the mandate at the board level that the statute envisages and the reality of how CSR decisions are made. Independent directors are expected to introduce external view and counter self-interest of management, yet they usually lack time and experience to take a deep look into CSR proposals. They tend to simply go along with what management proposes and committee minutes reflect procedural conformity and not debate.

D. The Definitional Problem with 'CSR Activity'

The wide reach of Schedule VII increases the definition of CSR, but also makes it ambiguous. The MCA has already released several FAQs to shed light on, yet there are questions of interpretation. Issues of whether or not contributions to government schemes are to be counted, whether employee welfare activities should be so counted, or whether marketing events with a social nature are allowable have consumed companies, their legal advice and the Registrar of Companies, in equal measure.²⁶

Worse still is where the activities are commercial and social in nature. A company that invests in vocational training of its future employees can rightly say that it is promoting livelihoods (a Schedule VII activity) and reducing recruitment expenses.²⁷ The existing framework does not explicitly forbid such overlap, implying that philanthropic spending that is genuinely driven,

²⁵ S Narayan and others, 'CSR in India: The Story So Far' (2016) 51(39) Economic and Political Weekly 48, 51.

²⁶ Confederation of Indian Industry, Handbook on Corporate Social Responsibility in India (CII 2013) 38.

²⁷ Aruna Sharma and K Balasubramanian, 'Impact Assessment of CSR Spending in India' (2021) 12(3) International Journal of Corporate Governance 233, 245.

and socially investment driven by strategic considerations are similarly treated as such in compliance terms.²⁸

VI. Reform Proposals

A. Shifting the Benchmark from Input to Outcome

The greatest change would be to switch, at least partially, the focus on the quantity of money spent on something to the monitoring of real results. This does not imply abandoning the 2 percent spending floor which still has a good coordination role. It implies the incorporation of compulsory reporting of outcomes in relation to quantifiable development indicators. A partial model is the SEBI Business Responsibility and Sustainability Reporting framework that is now applicable to the top 1000 listed companies. By applying similar outcome-reporting requirements to every CSR-eligible company, with standardised social impact measures reported along with annual CSR reports, would establish a data infrastructure that regulators, civil society, and investors could rely on to keep companies accountable.²⁹

B. Geographic Incentives for Underserved Regions

The geographic concentration can be addressed by a weighted credit system: the company spending on CSR in underdeveloped districts might have that amount of money count 1.5 or 2 times toward their 2 per cent requirement. This is already known by the fiscal policy (tax breaks to investing in backward regions) and would not need a constitutional change. It would establish a real monetary incentive to transfer CSR resources to the areas where social need is most acute, without the necessity to force companies to be present in the geographical areas that they do not serve yet.³⁰

C. Strengthening Board-Level Oversight

At least one of the members of a CSR Committee should be proven to have expertise in social development- public health, education, environmental science or community development as

²⁸ SEBI Circular No SEBI/LAD-NRO/GN/2021/22 dated 5 May 2021 on Business Responsibility and Sustainability Reporting.

²⁹ Aruna Sharma and K Balasubramanian, 'Impact Assessment of CSR Spending in India' (2021) 12(3) International Journal of Corporate Governance 233, 245.

³⁰ See Beloo Mehra (n 10) 7–8; and Jain and Bhaskar (n 19) 562.

required by the Companies Act.³¹ This would be a prerequisite similar to that of audit committee members that is financial expertise requirement in a number of jurisdictions and would make sure that deliberations of CSR committees are based on substantive knowledge and not financial logic. The statute or rule should also provide a minimum of three CSR Committee meetings per financial year and that the agendas should contain a review of progress against the annual CSR action plan.³²

D. Closing the Definitional Ambiguity

The MCA ought to put all its Schedule VII FAQs and circulars together in a single legally binding guide, revised on a regular basis. More importantly, this document must include criteria of what can be considered as activities that actually promote Schedule VII goals and what activities are mostly oriented on commercial interests with a social label on them. Better definition would minimize interpretive gaming and enforcement would be more rational.

VII. Conclusion

The compulsory regime in CSR in India under Section 135 is neither the social contract that the transformationists have argued to be, nor the cynical exercise that the critics of the regime have argued is the case. It occupies a truly ambivalent intermediate position, with the law being forced to raise spending up and compliance being tightened by adjustments, yet the logic behind the spending, as well as the mechanisms to transform the spending into actual impact, are still debated.

The tension in the regime is not by chance, but structural. Having made voluntary philanthropy a compulsory financial duty, Parliament eliminated one evil--that big corporations could not choose not to be socially responsible--but created another: that compliance would become an administrative rite that bears no relation to the actual social commitment. The evidence that has been reviewed in this article indicates that such a risk has realised in a large part of the qualifying companies.³³

All this is not irreversible. My proposed reforms of outcome reporting, geographic incentives,

³¹ Companies (Amendment) Act, 2020, s 7.

³² Sunil Dutt and Pavan Kumar Vijay, 'Mandatory CSR: Balancing Obligation and Autonomy' (2022) 5(1) NLSIU Law Review 89, 98.

³³ Tanusree Jain and Madan Lal Bhaskar, 'Corporate Social Responsibility in India: Reflections from an Institutional Perspective' (2016) 135(3) Journal of Business Ethics 553, 560.

enhanced board oversight, and definition are not systemic, but incremental. They do not destroy the law, but rather work within the law. Each of them alone enhances something. The two could then begin bridging the divide between what Section 135 promises and what it delivers.³⁴

The more profound insight of the Indian experiment could be that legal compulsion and actual social dedication are not the same thing. An effective law can help to put in place a situation in which actual corporate social responsibility has a greater chance of developing and is less challenging to sustain-but it cannot produce that obligation itself. The work of section 135 has not been completed, as the design needs to be right, involving a shift in incentives, better accountability, and elimination of the pathways to formalistic compliance that are the easiest to use.

³⁴See generally Sumit Ganguly, 'Accountability Mechanisms in India's CSR Regime: A Critical Appraisal' (2023) 14(1) *Indian Journal of Law and Justice* 112, 120.

REFERENCES

Legislation

Companies Act, 2013

Companies (Corporate Social Responsibility Policy) Rules, 2014 (as amended up to 2021)

Companies (Amendment) Act, 2016

Companies (Amendment) Act, 2019

Companies (Amendment) Act, 2020

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Schedule VII to the Companies Act, 2013

Cases and Parliamentary Materials

Ravi Shanker Prasad (then Minister of Law and Justice), Lok Sabha Debates, 17th Session (18 December 2012), col 712

Ministry of Corporate Affairs, Report of the High Level Committee on CSR (Government of India 2018)

SEBI Circular No SEBI/LAD-NRO/GN/2021/22 dated 5 May 2021 on Business Responsibility and Sustainability Reporting

Books and Reports

Carroll AB, 'A Three-Dimensional Conceptual Model of Corporate Performance' (1979) 4(4) Academy of Management Review 497

Confederation of Indian Industry, Handbook on Corporate Social Responsibility in India (CII 2013)

Freeman RE, *Strategic Management: A Stakeholder Approach* (Pitman 1984)

Friedman M, 'The Social Responsibility of Business is to Increase Its Profits' *The New York Times Magazine* (13 September 1970)

KPMG, *Survey of Corporate Responsibility Reporting 2022* (KPMG International 2022)

Ministry of Corporate Affairs, *Annual Report on CSR* (Government of India 2022–23)

Ministry of Corporate Affairs, *National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business* (Government of India 2011)

National Foundation for Corporate Governance, *Status of CSR in India: A Sectoral Analysis* (NFCG 2023)

National Stock Exchange of India, *Business Responsibility and Sustainability Reporting Framework* (NSE 2022)

Niti Aayog, *Strategy for New India @ 75* (Government of India 2018)

World Bank, *Corporate Social Responsibility: An Introduction* (World Bank 2003)

Journal Articles

Arora R and Kumar N, 'Board Oversight and CSR Compliance in Indian Companies' (2022) 23(1) *Journal of Indian Law and Society* 77

Dash P and Dash S, 'CSR in India after Companies Act 2013: An Analysis' (2019) 9(1) *Accounting and Finance Research* 45

Dhaliwal HS, 'CSR Spending and Social Impact in India' (2021) 18(4) *Corporate Governance: The International Journal of Business in Society* 701

Dutt S and Vijay PK, 'Mandatory CSR: Balancing Obligation and Autonomy' (2022) 5(1) *NLSIU Law Review* 89

Ganguly S, 'Accountability Mechanisms in India's CSR Regime: A Critical Appraisal' (2023) 14(1) *Indian Journal of Law and Justice* 112

Jain T and Bhaskar ML, 'Corporate Social Responsibility in India: Reflections from an Institutional Perspective' (2016) 135(3) *Journal of Business Ethics* 553

Mehra B, 'Mandatory CSR in India: The Road Ahead' (2014) 56(1) *Indian Journal of Industrial Relations* 1

Mehra P and Kumar V, 'Decoding the Intent Behind CSR in India: Beyond the Spend' (2020) 7(3) *Asian Journal of Business Ethics* 201

Miglani S and Kapoor S, 'Corporate Social Responsibility in India: Mandatory or Voluntary?' (2015) 4(2) *Journal of Commerce and Accounting Research* 29

Narayan S and others, 'CSR in India: The Story So Far' (2016) 51(39) *Economic and Political Weekly* 48

Pande P, 'Gaps in CSR Implementation in India: An Empirical Study' (2020) 11(2) *International Journal of Social Economics* 189

Sharma A and Balasubramanian K, 'Impact Assessment of CSR Spending in India' (2021) 12(3) *International Journal of Corporate Governance* 233

Sharma P, 'CSR and Development: The Indian Experience' (2019) 3(2) *Journal of Law and Social Sciences* 44