ENFORCING CSR IN INDIA: A CRITICAL REVIEW OF SECTION 135

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ABSTRACT

Section 135 of the Companies Act, 2013 represents a landmark development in Indian corporate law by converting Corporate Social Responsibility (CSR) from a voluntary practice into a statutory obligation. This article offers a purely legal examination of the mandatory CSR framework, focusing on the structure, intent, and functioning of Section 135, the CSR Rules, and related amendments. It analyses how the law conceptualises CSR duties, the role of corporate boards, the nature of permissible activities under Schedule VII, and the evolution of compliance requirements through successive legislative interventions.

The study highlights that the legal framework, while comprehensive, contains several conceptual and procedural ambiguities. Issues arise in interpreting Schedule VII, determining the scope of "ongoing projects," regulating implementing agencies, and understanding the extent of board responsibility for CSR decisions. The shift towards penalties, mandatory transfer of unspent CSR amounts, and enhanced reporting obligations under the 2019, 2020, and 2021 amendments has strengthened the enforcement architecture but also raised new questions about proportionality, regulatory overreach, and the balance between corporate autonomy and statutory compulsion. Judicial and administrative interpretations by the Ministry of Corporate Affairs further reveal the evolving nature of CSR jurisprudence in India.

This article argues that the effectiveness of Section 135 ultimately depends on the legal clarity, coherence, and enforceability of its provisions. Strengthening statutory definitions, standardising compliance procedures, improving guidance on Schedule VII, and ensuring consistency in regulatory interpretations can enhance predictability and reduce litigation. The conclusion emphasises that while Section 135 is a bold legal experiment, its long-term success requires a more refined and legally robust framework that promotes meaningful compliance without undermining corporate freedom

Keywords: Corporate Social Responsibility; Section 135; Companies Act, 2013; CSR Rules; Legal Compliance; Statutory Enforcement.

1. Introduction

Corporate Social Responsibility (CSR) in India has slowly moved from being a matter of corporate goodwill to a structured legal obligation. This shift became concrete with the enactment of Section 135 of the Companies Act, 2013, which made India the first country to mandate CSR spending for eligible companies.[1] The idea behind this provision was not simply to require businesses to donate money, but to integrate social responsibility into the core of corporate governance. By linking CSR to board oversight, statutory reporting, and a defined list of permissible activities under Schedule VII, the law attempts to ensure that CSR is planned, accountable and aligned with national development priorities.

Over the years, the CSR framework has expanded through several amendments and detailed rules. The Companies (CSR Policy) Rules, 2014 laid the initial structure, but later changes in 2019, 2020 and 2021 significantly altered the compliance landscape.[2] These amendments introduced concepts such as mandatory transfer of unspent funds, stricter reporting formats, and even penalties for non-compliance. While these reforms make the law stronger on paper, they also bring new legal questions-such as how far the State can push companies to participate in social development, how implementing agencies should be regulated, and how corporate boards should balance CSR duties with business objectives. The Ministry of Corporate Affairs has attempted to clarify many of these issues through circulars, notifications, and two High-Level Committee reports, yet interpretation challenges continue to arise.[3]

Because CSR in India is now governed by a detailed and evolving legal regime, understanding Section 135 requires more than simply reading the statute. It calls for a careful examination of the intent behind the law, the practical implications of amendments, and the growing body of administrative guidance that shapes CSR compliance.

2. Legal framework of CSR under section 135

The legal framework of Corporate Social Responsibility (CSR) under Section 135 of the

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[1] The Companies Act, 2013 (Act 18 of 2013), s. 135.
[2] The Companies (Corporate Social Responsibility Policy) Rules, 2014; The Companies (Amendment) Act, 2019 (Act 22 of 2019); The Companies (Amendment) Act, 2020 (Act 29 of 2020); The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.
[3] Ministry of Corporate Affairs, "Report of the High Level Committee on Corporate Social Responsibility" (2018); Ministry of Corporate Affairs, "Report of the High Level Committee on Corporate Social Responsibility" (2020).

Companies Act, 2013, lays out mandatory requirements for certain companies in India to undertake CSR activities. This legislation transformed CSR from a voluntary initiative into a statutory obligation for eligible companies.[4]

2.1 Statutory Structure under Section 135 of the Companies Act, 2013

Section 135 forms the core of India's CSR regime. It specifies which companies must comply and outlines their key responsibilities. Companies crossing certain financial thresholds must set up a CSR Committee, draft a CSR Policy, and ensure that at least two per cent of their average net profits for the past three years is spent on CSR activities.[5] These obligations are reinforced through mandatory disclosures in the Board's Report, signalling that CSR is now part of India's formal corporate governance system. Scholars note that this marks a shift from voluntary philanthropy to a quasi-regulatory model of corporate responsibility.[6]

2.2 Scope of CSR Activities under Schedule VII

Schedule VII lists the activities that qualify as CSR, covering fields such as education, healthcare, sanitation, gender equality, environmental sustainability, and rural development.[7] Although the schedule is drafted broadly, the Ministry of Corporate Affairs (MCA) has clarified that companies must stay aligned with genuine public welfare and avoid treating CSR as an extension of their normal business operations.[8] Academic commentary observes that Schedule VII should be understood as a "living document" that adapts to evolving social needs while maintaining clear boundaries.[9] MCA circulars support a liberal yet principled interpretation to prevent misuse of CSR funds while allowing flexibility in implementation.[10]

2.3 CSR Rules, 2014 and Subsequent Amendments

The Companies (CSR Policy) Rules, 2014 give effect to Section 135 by specifying how CSR

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[4] Manfred Max Bergman, Zinette Bergman, Yael Teschemacher, Bimal Arora, Divya Jyoti & Rijit Sengupta, "Corporate Responsibility in India: Academic Perspectives on the Companies Act 2013" 11 *Sustainability* 5939 (2019).
[5] *Supra* Note 1, s. 135(5).
[6] N. Kumar, "Corporate Social Responsibility in India: A Legal Perspective" 11(2) *Indian Journal of Corporate Governance* (2018).
[7] The Companies Act, 2013 (Act 18 of 2013), Sch. VII.
[8] Ministry of Corporate Affairs, "General Circular No. 21/2014" (June 18, 2014).
[9] R. Sharma, "Reinterpreting Schedule VII: The Expanding Contours of CSR Activities" 7(1) *Journal of Business Law Review* (2020).
[10] Ministry of Corporate Affairs, "General Circular No. 01/2016" (January 12, 2016).

policies should be framed, how implementing agencies must be chosen, and how project monitoring should occur.[11] The regulatory structure became stricter with the 2019 amendment, which introduced penalties for non-compliance and positioned CSR as a statutory duty rather than a moral choice.[12] The 2020 amendment and the 2021 CSR Policy Amendment Rules introduced further discipline by mandating transfer of unspent CSR funds, distinguishing between ongoing and non-ongoing projects, and requiring implementing agencies to register with the Central Government.[13] Scholars argue that these changes reflect a clear policy intention to close compliance loopholes and strengthen accountability.[14]

2.4 Judicial and Administrative Interpretations

Judicial decisions on CSR remain limited but provide useful guidance on the statutory intent of Section 135. In Technicolor India (P) Ltd. v. Registrar of Companies, the NCLT emphasised adherence to CSR reporting obligations and the transparency expected from companies.[15] Much of the interpretive clarity comes from MCA circulars, which address recurring issues such as administrative overhead limits, treatment of surplus CSR funds, and the meaning of "ongoing projects."[16] Journal literature notes that these administrative clarifications play a crucial role in shaping CSR jurisprudence because CSR is still relatively new in India's corporate law landscape.[17] Together, these judicial and administrative interpretations help ensure more uniform application of the law and reduce ambiguity in corporate compliance.

3. Compliance trends under section 135

Compliance with Section 135 of the Companies Act, 2013, has shown significant growth and evolution since its implementation. Most large eligible companies are now undertaking CSR activities and disclosing their CSR spending as mandated.[18]

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[11] *Supra* Note 2, rr. 4-9.
[12] *Supra* note 2, ss. 27–30.
[13] *Supra* note 2, s. 21; *Supra* note 2, rr. 4,5,8.
[14] A. Banerjee, "Mandatory CSR in India: Compliance, Governance and Legal Challenges" 12 *NUJS Law Review* (2021).
[15] *Technicolor India (P) Ltd. v. Registrar of Companies*, 2017 SCC OnLine NCLT 20256.
[16] Ministry of Corporate Affairs, General Circular No. 14/2021, dated 25 August 2021.
[17] P. Singh, "CSR Jurisprudence in India: Emerging Trends and Interpretive Challenges" 5(2) *Journal of Corporate and Commercial Law* (2019).
[18] Panchali Guha, "Why Comply with an Unenforced Policy The Case of Mandated Corporate Social Responsibility in India" 3 *Policy Design and Practice* 58-72 (2020).

3.1 Nature of Compliance: Form-Based vs. Substantive Compliance

Although Section 135 is designed to create meaningful social responsibility, compliance often tends to be formal rather than substantive. Many companies satisfy procedural requirements, such as constituting a CSR Committee, framing a CSR Policy, and disclosing CSR expenditure in the Board's Report, without ensuring that projects genuinely align with Schedule VII or create sustainable impact.[19] Legal scholars note that this "form over substance" approach stems from the rule-based design of the law, which emphasises procedural adherence more than outcome-based responsibility.[20]

Substantive compliance, by contrast, requires companies to ensure that CSR activities are selected, implemented, and monitored with care, and that they reflect the spirit of Section 135. The law does not yet mandate social impact as a criterion for compliance, which creates tension between fulfilling statutory requirements and achieving real development outcomes.[21] The move towards impact assessments in the 2021 Rules reflects an effort to shift companies gradually toward more meaningful compliance.[22]

3.2 Recurring Legal Challenges and Grey Areas in CSR Implementation

Several legal uncertainties continue to affect CSR compliance. One recurring issue involves the interpretation of "ongoing projects," which determines whether unspent CSR funds must be transferred to designated government funds or retained in a special account.[23] Another challenge relates to the permissible scope of CSR activities under Schedule VII, especially in borderline cases where projects resemble business promotion or employee welfare.[24] MCA circulars offer guidance, but ambiguities persist.

Further legal tension arises around the role and regulation of implementing agencies. The 2021 Rules require these agencies to register with the central government, adding a compliance layer but also raising questions about oversight and accountability.[25] Scholars argue that these gaps can lead to inconsistent compliance and differing interpretations across companies and

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[19] *Supra* note 1, s. 135(1)-(5).
[20] *Supra* note 6.
[21] *Supra* note 14
[22] *Supra* note 2, r. 8(3).
[23] *Supra* note 2, r. 2(1)(i).
[24] *Supra* note 9.
[25] *Supra* note 2, r. 4(1).

sectors.[26] Additionally, the treatment of administrative overheads, surplus CSR funds, and set-offs for excess spending continues to create compliance-related confusion.

3.3 Governance and Board Oversight Issues

Section 135 places significant responsibility on the Board of Directors, including approval of the CSR Policy, oversight of activities, and disclosure of reasons for shortfall in spending.[27] However, practical challenges often arise due to limited engagement of boards with CSR strategy, inadequate monitoring systems, and delegation of core responsibilities to CSR teams or external agencies.[28] Several studies highlight that boards often treat CSR as a compliance task rather than as an area requiring strategic oversight.[29]

The effectiveness of the CSR Committee also varies widely among companies. While the law mandates the formation of such a committee, it does not specify minimum qualifications, expertise, or time commitment, allowing wide variation in effectiveness.[30] The absence of clear legal standards for committee functioning sometimes leads to superficial oversight. Strengthening governance mechanisms within the company is therefore essential to ensure that CSR obligations are fulfilled in both letter and spirit.

4. Enforcement mechanisms and their effectiveness

The enforcement mechanisms for CSR under Section 135 of the Companies Act, 2013, are relatively weak and rely more on disclosure and reputational pressure than on direct penalties or rigorous monitoring. Despite this, compliance rates have remained high, largely due to social norms and stakeholder expectations rather than strict regulatory enforcement.[31]

4.1 Statutory Enforcement Tools under Section 135

Over the years, the enforcement structure of Section 135 has become more stringent. The law now makes it clear that companies must either spend the required CSR amount or formally

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[26] *Supra* note 17.
[27] *Supra* note 1, s. 135(3)-(4).
[28] S. Khandelwal, "Board Oversight and CSR Accountability in India" 33(4) *Company Law Journal* (2020).
[29] M. Joshi, "Corporate Governance and CSR: Board Engagement under the Companies Act, 2013" 6(1) *Indian Journal of Corporate Law Studies* (2021).
[30] *Supra* note 1, s.135(3).
[31] Layasri B. and Sribala V., "Legal Insights into CSR Practices" 5 *International Journal for Multidisciplinary Research (IJFMR)* (2023).

explain the shortfall in their Board's Report.[32] Unspent amounts relating to ongoing projects must be kept aside in a dedicated "Unspent CSR Account," while unspent funds for non-ongoing projects must be transferred to specific government funds within a strict time frame.[33]

The introduction of monetary penalties in the 2019 amendment marked a major shift. CSR non-compliance was no longer seen as a minor lapse but as a statutory breach with clear consequences.[34] Scholars point out that this moves CSR from being a soft, voluntary idea to a harder, regulatory obligation.[35] These statutory tools ensure that companies cannot simply ignore CSR responsibilities without facing legal repercussions.

4.2 Role of Regulatory Authorities

The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are the main bodies responsible for monitoring CSR compliance. The ROC can examine CSR reports, seek clarifications, and impose penalties if companies fail to meet statutory requirements.[36] MCA, on the other hand, sets the tone of CSR enforcement through circulars, notifications and ongoing guidance that help companies navigate grey areas in the law.[37]

Auditors and the National Financial Reporting Authority (NFRA) also contribute by ensuring accuracy in CSR-related disclosures.[38] Legal writers note that the effectiveness of CSR enforcement often depends on how actively these regulatory bodies scrutinise filings and respond to violations.[39] This makes enforcement a combined effort of administrative oversight, statutory monitoring, and financial reporting.

4.3 Judicial and Quasi-Judicial Approach to CSR Enforcement

Although CSR-related litigation is still limited, the decisions that do exist highlight the judiciary's focus on transparency and statutory compliance. The NCLT's ruling in Technicolor India (P) Ltd. v. Registrar of Companies reinforced that CSR reporting is a legal obligation and

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[32] *Supra* note 5.
[33] *Supra* note 2, r. 5.
[34] *Supra* note 12.
[35] *Supra* note 14.
[36] *Supra* note 1, ss. 206-207.
[37] Ministry of Corporate Affairs, "General Circular No. 14/2021" (August 25, 2021).
[38] The National Financial Reporting Authority Rules, 2018.
[39] V. Sharma, "Regulating CSR: Role of MCA and Corporate Regulators" 35(2) *Company Law Journal* (2021).

cannot be treated casually.[40] Courts and tribunals have consistently made it clear that CSR cannot be used for normal business activities or employee benefits.[41]

Academic commentary suggests that Indian tribunals interpret CSR provisions seriously, and companies are expected to follow both the letter and the spirit of the law.[42] As disputes relating to unspent funds, ongoing projects, or reporting gaps increase, judicial interpretation is likely to play a much bigger role in shaping CSR compliance standards.

4.4 Effectiveness and Limitations of the Enforcement Framework

Despite having strong legal provisions, enforcement on the ground still faces challenges. Regulators rely heavily on companies' self-reported information, and it is not always feasible for authorities to verify every CSR project.[43] This can lead to uneven enforcement—some violations are penalised strictly, while others slip through unnoticed.[44]

There is also a concern that strict enforcement of spending requirements may cause companies to focus more on "meeting the numbers" than on designing meaningful CSR initiatives.[45] Scholars argue that the law needs to strike a balance: penalties must deter non-compliance, but the system should also encourage thoughtful planning and long-term impact.[46] In short, while the legal framework is strong, its effectiveness depends on consistent regulatory oversight and clearer guidance that helps companies move beyond mere compliance toward genuine social responsibility.

5. Comparative analysis of CSR regulation: India and global frameworks

Corporate Social Responsibility is regulated very differently across the world, and India's approach stands out as the only model that mandates a minimum spending requirement by law. This chapter places Section 135 within a broader global context by comparing India's mandatory, expenditure-driven framework with the largely voluntary, disclosure-based CSR

[40] *Supra* note 15.
[41] *Supra* note 8.
[42] *Supra* note 17.
[43] S. Khandelwal, "Challenges in Enforcing CSR Compliance in India" 12(1) *Indian Journal of Corporate Governance* (2020).
[44] *Supra* note 29.
[45] *Supra* note 6.
[46] R. Choudhury, "CSR Enforcement in India: Between Mandates and Motivation" 9(3) *Business Law Review* (2020).

systems followed in jurisdictions such as the United Kingdom, the European Union and the United States. Understanding these international models helps highlight the uniqueness of India's experiment and offers insights into how the Indian CSR regime can evolve in line with global sustainability trends.

5.1 CSR Regulation in the United Kingdom

The United Kingdom follows a disclosure-based, governance-oriented approach to Corporate Social Responsibility, rather than mandating any minimum level of CSR expenditure. CSR is embedded primarily through provisions of the Companies Act, 2006, which requires directors to consider the long-term consequences of their decisions, the interests of employees, community impact, and environmental sustainability.[47] This concept is known as "enlightened shareholder value" it forms the backbone of the UK's CSR philosophy. It places responsibility on corporate leaders to balance shareholder value with broader stakeholder interests.

Instead of prescribing CSR spending, the UK focuses on transparency. Large companies must publish a Strategic Report that discloses non-financial information, including environmental matters, employee issues, social responsibility measures, and human rights concerns.[48] The reporting framework was strengthened through the UK Non-Financial Reporting Regulations, which require companies to provide clear explanations of their policies, due diligence processes, and outcomes related to social and environmental factors.[49]

Additionally, the UK Corporate Governance Code encourages companies to adopt responsible business practices by emphasising integrity, accountability, and long-term sustainability in governance structures.[50] Academic commentary suggests that this model relies on market pressure, stakeholder scrutiny, and corporate reputation rather than statutory compulsion to drive responsible behaviour.[51] As a result, while the UK approach is less prescriptive than India's mandatory CSR spending requirement, it places strong emphasis on disclosure quality and board-level accountability.

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[47] The Companies Act, 2006 (UK), s. 172.
[48] *Supra* note 47, ss. 414A–414D.
[49] The Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations, 2016 (UK).
[50] Financial Reporting Council, "The UK Corporate Governance Code" (2018).
[51] L. Brown, "CSR and Corporate Governance in the UK: A Disclosure-Based Approach" 10(2) *Journal of Business Law Review* (2021).

5.2 CSR Framework in the European Union

The European Union follows one of the most structured and comprehensive CSR systems in the world, rooted in mandatory non-financial reporting rather than mandatory CSR spending. The EU framework is built on the idea that companies should disclose how their activities affect society, the environment, and human rights, thereby enabling regulators, investors, and the public to hold them accountable.

The foundation of EU CSR regulation is the Non-Financial Reporting Directive (NFRD) 2014/95/EU, which requires certain large companies to disclose information relating to environmental performance, social and employee matters, human rights, anti-corruption policies, and diversity.[52] This approach focuses on transparency rather than expenditure, compelling companies to integrate sustainability considerations into their decision-making.

Recognising the need for stronger sustainability rules, the EU adopted the Corporate Sustainability Reporting Directive (CSRD) in 2022, significantly expanding the number of companies required to report and introducing detailed, standardised reporting requirements.[53] CSRD mandates digital reporting, audit assurance, and alignment with the European Sustainability Reporting Standards (ESRS).[54] Unlike India's mandatory 2% CSR spending rule, the EU's model prioritises risk assessment, due diligence, and forward-looking sustainability planning.

The European Commission has also issued guidelines that help companies understand how to prepare meaningful non-financial reports, emphasising relevance, comparability, and materiality.[55] Scholars observe that the EU's approach reflects a shift from voluntary corporate citizenship to regulated sustainability governance.[56] Together, these directives create a robust framework that encourages corporate accountability while avoiding prescriptive spending requirements.

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[52] Directive 2014/95/EU of the European Parliament and of the Council, art. 1.
[53] Directive (EU) 2022/2464 (Corporate Sustainability Reporting Directive), art. 2.
[54] European Commission, "European Sustainability Reporting Standards (ESRS)" (2022).
[55] European Commission, "Guidelines on Non-Financial Reporting (Methodology for Reporting Non-Financial Information)" (2017).
[56] M. Fischer, "Sustainability Reporting and Corporate Responsibility in the EU" 18(3) *European Company Law Journal* (2021).

5.3 CSR and Corporate Sustainability in the United States

The United States follows a market-driven and disclosure-based approach to Corporate Social Responsibility, very different from India's mandatory CSR spending model. In the U.S., there is no statutory obligation requiring companies to spend a fixed percentage of their profits on CSR. Instead, CSR practices are shaped primarily by shareholder expectations, market pressures, and evolving environmental, social, and governance (ESG) norms.

The U.S. Securities and Exchange Commission (SEC) plays a key role by requiring listed companies to disclose material risks, including those related to environmental impact, climate change, human capital, and governance practices.[57] These disclosures are incorporated into annual filings such as Form 10-K and are guided by materiality principles rather than prescriptive CSR rules. This system encourages companies to be transparent about sustainability-related risks that may affect financial performance.

In recent years, ESG-based investment trends have further influenced CSR behaviour in the United States. Large institutional investors, including pension funds and asset managers, increasingly demand sustainability reporting, climate risk disclosures, and socially responsible business conduct.[58] This shift has pushed companies to adopt voluntary sustainability frameworks such as the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB) standards, and the UN Global Compact principles.[59]

Some sectors, especially those with significant environmental footprints, also follow specialised federal or state-level regulations relating to environmental protection, labour rights, or consumer welfare.[60] However, these regulations are not framed as CSR obligations. Academic commentary often notes that the U.S. model emphasises corporate accountability through transparency and investor influence, rather than statutory compulsion.[61]As a result, CSR in the United States remains primarily a voluntary, reputation-driven, and investor-led exercise.

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[57] U.S. Securities and Exchange Commission (SEC), "Regulation S-K", 17 CFR Part 229.

[58] J. Sullivan, "ESG Investing and Corporate Sustainability in the United States" 11(1) *Harvard Business Law Review* (2021).

[59] SASB Standards Board, "Sustainability Accounting Standards" (2020); Global Reporting Initiative, "GRI Standards" (2021).

[60] U.S. Environmental Protection Agency (EPA), "Environmental Compliance Guidelines" (2020).

[61] P. Turner, "Corporate Responsibility in the U.S.: Market Pressure Over Legal Mandates" 58(2) *American Business Law Journal* (2020).

6. Conclusion

Section 135 of the Companies Act, 2013 marks a major shift in how India views the role of business in society. By making CSR a legal obligation rather than a voluntary choice, the law sets clear expectations that financially strong companies must contribute to national development. Over the years, the amendments and CSR Rules have continued to strengthen this mandate by introducing clearer reporting duties, stricter timelines for using or transferring funds, and even penalties for non-compliance.

Yet, the journey of mandatory CSR has not been without challenges. While the law is well-intentioned and increasingly detailed, companies often focus more on completing procedural requirements than on ensuring meaningful outcomes. Legal grey areas, such as how to classify ongoing projects, handle surplus funds, or regulate implementing agencies lead to confusion and inconsistent practices across industries. These uncertainties make it difficult for companies to fully understand what genuine compliance looks like beyond simply meeting the spending requirement.

Regulators like the Ministry of Corporate Affairs and the Registrar of Companies have tried to fill these gaps through circulars and clarifications, and their role remains crucial in shaping how CSR is actually implemented on the ground. Judicial guidance, though still emerging, has started to reinforce the idea that CSR obligations must be taken seriously and carried out with transparency.

The comparative analysis shows that India's mandatory, expenditure-based CSR model is distinct from global practices, where disclosure-driven and sustainability-focused frameworks dominate. These international systems highlight the importance of high-quality reporting, independent audits, and long-term sustainability planning rather than prescribed spending thresholds. Integrating such global best practices into India's framework can help shift CSR from a compliance exercise toward a more outcome-oriented and socially meaningful model.

In the end, the effectiveness of Section 135 depends not only on the strength of the law but also on the willingness of companies to see CSR as more than a legal burden. With clearer rules, stronger oversight, and more thoughtful board involvement, CSR can move beyond box-ticking and evolve into a meaningful instrument for social change. Mandatory CSR is a bold legal experiment, one that holds great promise if supported by consistent enforcement and genuine commitment from the corporate sector.

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