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# Investigating the Role of the Indian Government in Regulating and Promoting Corporate Social Responsibility

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## ABSTRACT

*This essay is an attempt to map the engagement and regulatory dynamics instituted by the Indian government in its endeavour to regulate and promote Corporate Social Responsibility (“CSR”). By systematically characterising its nature, it first conceptualises CSR's contemporary interpretation, rationale, and legitimacy in the age of globalisation and expanding markets. Secondly, it complements its relevance and highlights the legislative efforts undertaken by the Indian government to secure responsible business conduct, while the subsequent section underscores the government's role in advancing the CSR agenda. It then critically examines the Government of India's (“GOI”) promotional policies and initiatives and argues for its strategic enhancement by synthesising international policy frameworks and implementation approaches to develop a comprehensive policy that best aligns with India's unique socio-economic setting. Finally, it concludes by emphasising the need to address regulatory gaps in India's current CSR governance model.*

**Keywords:** Corporate Social Responsibility, Government, Promotion, Regulating, India.

## I. INTRODUCTION

The 1991 economic reforms heralded the beginning of the market liberalisation process in India.<sup>2</sup> The failure of the ‘inward-looking import substitution’ model of development had, consequently, resulted in the enunciation of a radically new economic policy by the then Prime Minister Narsimha Rao.<sup>3</sup> The increased presence of Multi-National Corporations (MNCs) on Indian soil altered the traditional perception of corporations as mere functions of financial performance and profitability.<sup>4</sup> Their role was redefined and perceived through broader

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<sup>2</sup> Seema G. Sharma, ‘Corporate Social Responsibility in India: An Overview’ (2009) 43 (4) The International Lawyer <<https://www.jstor.org/stable/40708084>> accessed 12 December 2023

<sup>3</sup> Charan D. Wadhva, ‘India Trying to Liberalise: Economic Reforms since 1991’ (2004) 20 APCSS <<https://dkiapcss.edu/wp-content/uploads/2010/PDFs/Edited%20Volumes/RegionalFinal%20chapters/Chapter16Wadhva.pdf>> accessed 12 December 2023

<sup>4</sup> KPMG & ASSOCHAM *Corporate Social Responsibility- Towards a Sustainable Future- A White Paper* (2008)

responsibility towards society and the environment, which subsequently exposed India to a highly developed regime of CSR initiatives.<sup>5</sup> CSR in India isn't a recent development; it was historically rooted in religious belief and culture.<sup>6</sup> However, the pioneering efforts of Indian industrial families such as the Tata, Godrej, Bajaj, Birla, and Singhanias towards social consideration led to its ethical origin, which the Gandhian trusteeship model on socialism later underpinned.<sup>7</sup>

Regardless of its growing awareness and popularity, there has yet to be unanimity regarding what it means. Nevertheless, the United Nations Industrial Development Organization defines CSR as “the way through which a company achieves a balance of economic, environmental and social imperatives, while at the same time addressing the expectations of shareholders and stakeholders”.<sup>8</sup> Unlike India, where the concept of CSR is governed by section 135, Schedule VII of the Companies Act, 2013 and Companies (CSR Policy) Rules, 2014,<sup>9</sup> elsewhere, it is typically assumed to be a voluntary initiative.<sup>10</sup> Its legitimacy is defended by its utilitarian nature, despite it defying Salmons' idea of rights and obligations.<sup>11</sup> Reliance is also placed on judicial precedents such as the *Indian Petrochemical Corporation Ltd. v. MC Mehta*,<sup>12</sup> and *Union Carbide Corporation v. Union of India*,<sup>13</sup> to underscore its legal imperative to contribute positively to societal welfare. Thus, the state sets the discourse on CSR in India as an alternative development model to state intervention, with the potential to address governance issues.

## II. REGULATING CORPORATE SOCIAL RESPONSIBILITY IN INDIA

While the relevance of CSR might differ in each jurisdiction, the government's role in mandating, facilitating, partnering and endorsing it remains consistent.<sup>14</sup> The diversity in its

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<sup>5</sup> Sharma (n 1) 1522.

<sup>6</sup> KPMG & ASSOCHAM (n 5) 3.

<sup>7</sup> *ibid* 1616-18.

<sup>8</sup> Asan Vernyuy Wirba, 'Corporate Social Responsibility (CSR): The Role of Government in Promoting CSR' (2021) 1 *Journal of the Knowledge Economy* <<https://doi.org/10.1007/s13132-023-01185-0>> accessed 12 December 2023

<sup>9</sup> The Companies Act 2013, s 135 & Schedule VII.

<sup>10</sup> Li-Wen Lin, 'Mandatory Corporate Social Responsibility Legislation around the World: Emergent Varieties and National Experiences' (*Oxford Business Law Blog*, 18 November 2020) <<https://blogs.law.ox.ac.uk/business-law-blog/blog/2020/11/mandatory-corporate-social-responsibility-legislation-around-world>> accessed 12 December 2023

<sup>11</sup> Sneha Sengupta, 'Corporate Social Responsibility in India: A Constitutional and Theoretical Commentary' (2021) *Academike* <<https://www.lawctopus.com/academike/corporate-social-responsibility-in-india/>> accessed 12 December 2023

<sup>12</sup> *Indian Petrochemicals Corporation Ltd. v. MC Mehta* AIR 1987 SC 1086.

<sup>13</sup> *Union Carbide Corporation v. Union of India* AIR 1992 SC 248.

<sup>14</sup> Jeremy Moon, 'Government as a Driver of Corporate Social Responsibility' (2004) 20 *ICCSR* <[https://www.researchgate.net/publication/251565075\\_Government\\_as\\_a\\_Driver\\_of\\_Corporate\\_Social\\_Responsibility](https://www.researchgate.net/publication/251565075_Government_as_a_Driver_of_Corporate_Social_Responsibility)> accessed 14 December 2023

implementation is influenced by factors in the business system.<sup>15</sup> Most initiatives echo principles and guidelines established by international organisations such as the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the ASEAN Socio-Cultural Community Blueprint and the G20 processes.<sup>16</sup> During the last two decades, the Indian government has undertaken several legislative efforts besides making periodic calls to secure responsible business conduct.

To regularise their adherence, the Ministry of Corporate Affairs released the “*Corporate Governance Voluntary Guidelines*” and the “*National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs)*” in 2009 and 2011, respectively.<sup>17</sup> In 2019, the NVGs were revised, and the “*National Guidelines for Responsible Business Conduct*” were introduced to ensure adherence to the thrust of the Companies Act, 2013, UN Guiding Principles on Business and Human Rights (UNGPs) and Sustainable Development Goals (SDGs).<sup>18</sup> Meanwhile, the Securities and Exchange Board of India (SEBI) had prescribed the “*Business Responsibility Reporting Framework (BRR)*” for the top 100 listed companies as per market capitalisation.<sup>19</sup>

To further harness the influence and affluence of corporations, the Indian parliament mandated CSR on companies having an annual turnover of Rs 10 billion, or a net worth of Rs 5 billion or a net profit of Rs 50 million.<sup>20</sup> It provides that the qualifying companies must spend 2% of their net profit over the preceding three years on CSR activities.<sup>21</sup> However, it is heavily criticised for its “*comply or explain*” approach, lack of enforcement mechanism, the resultant lackadaisical attitude of regulators about disclosure of non-compliance, and its mere emphasis on spending rather than promoting sustainable business practises.<sup>22</sup>

However, the emphatical evidence on its implementation contravenes the High-Level

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<sup>15</sup> W Chapple & J Moon, ‘Corporate Social Responsibility (CSR) in Asia: A Seven-Country Study of CSR Website Reporting’ (2005) 44 (4) *Business & Society* <<https://doi.org/10.1177/0007650305281658>> accessed 14 December 2023

<sup>16</sup> *ibid.*

<sup>17</sup> Ministry of Corporate Affairs, Report of the High-Level Committee on Corporate Social Responsibility (Government of India 2019).

<sup>18</sup> *ibid.*

<sup>19</sup> Haridev Verma, ‘Business Responsibility and Sustainability Reporting- An Effort to Achieve Sustainability’ (2021) 2 (1) *Journal of Legal Research and Juridical Sciences* <<https://jlrjs.com/wp-content/uploads/2023/07/74.-Haridev-Verma.pdf>> accessed 14 December 2023

<sup>20</sup> The Companies Act 2013, s. 135 (1).

<sup>21</sup> Ruchi Khandelwal & Swarna Bakshi, ‘The New CSR Regulation in India: The Way Forward’ (2014) 11 *Procedia Economics and Finance* <<https://www.sciencedirect.com/science/article/pii/S2212567114001762>> accessed 14 December 2023

<sup>22</sup> Rabinarayan Samantara & Shivanigi Shawan, ‘Corporate Social Responsibility in India: Issues and Challenges’ (2020) 11 (2) *IIMS Journal of Management Science* <[https://www.researchgate.net/publication/344257785\\_Corporate\\_social\\_responsibility\\_in\\_India\\_Issues\\_and\\_challenges#fullTextFileContent](https://www.researchgate.net/publication/344257785_Corporate_social_responsibility_in_India_Issues_and_challenges#fullTextFileContent)> accessed 14 December 2023

Committee's assertions on the adequacy of penal and compliance requirements.<sup>23</sup> Although relying on the government to address regulatory deficiencies extensively might not be prudent, one may consider engaging with third-party verifiers to ensure compliance. The United States had strategically employed this approach to enforce laws on environmental protection, labour standards and food safety.<sup>24</sup> Given its suitability to the Indian context, the proven approach in sustainable legislation would enhance efforts and ensure compliance with the CSR mandate.<sup>25</sup>

### III. ROLE OF THE GOVERNMENT IN PROMOTING CORPORATE SOCIAL RESPONSIBILITY

The Indian government's involvement in promoting CSR is primarily due to social governance deficits reflected through vulnerabilities in technological infrastructure and economic systems and its realisation of the private sector's pivotal role in addressing social concerns.<sup>26</sup> Based on differing CSR themes, government initiatives can be classified into four distinct roles corresponding to the '*traditional command and control regulatory model*'.<sup>27</sup> Through mandates, it is responsible for setting benchmarks for businesses to follow, setting minimum targets, and issuing guidelines governing investment, taxes, licencing requirements, and financing.<sup>28</sup>

The contrary is facilitation, wherein it is expected of the government to have a softer approach to help establish a preparatory ground for volunteering agreements to occur and enhance engagements amongst civil societies and stakeholders.<sup>29</sup> This approach has been best practised in Japan, the UK and Australia to process trainees and design systems.<sup>30</sup> Through the role of partnership, it can facilitate multistakeholder code development and dialogue besides negotiating agreements.<sup>31</sup> It is argued that this is the most catalyst approach.<sup>32</sup> Finally, its role as an endorser is concerned with political support, which is quintessential to policy-making, supporting metrics, public procurement, and labelling schemes.<sup>33</sup>

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<sup>23</sup> Umakanth Varottil, 'Analysing the CSR Spending Requirements under Indian Company Law' (2018) 4 Springer <<https://ssrn.com/abstract=3173945>> accessed 14 December 2023

<sup>24</sup> *ibid.*

<sup>25</sup> Varottil (n 22) 24.

<sup>26</sup> Wirba (n 7) 7.

<sup>27</sup> Halina Ward, 'Public Sector Roles in Strengthening Corporate Social Responsibility (2004) 1 World Bank <<https://documents1.worldbank.org/curated/en/548301468313740636/pdf/346560CSR1Taking1Stock.pdf>> accessed 14 December 2023

<sup>28</sup> *ibid.*

<sup>29</sup> Ward (n 26) 11.

<sup>30</sup> Ajay Gajanan Bhawe, 'Experiences of the Role of Government in Promoting Corporate Social Responsibility Initiatives in the Private Sector' (2009) IIIIEE <<https://lup.lub.lu.se/student-papers/record/1511060/file/1511079.pdf>> accessed 14 December 2023

<sup>31</sup> Bhawe (n 29) 17.

<sup>32</sup> *ibid.*

<sup>33</sup> Ward (n 26) 11.

A more concise classification of its role would involve the government's instrumental role in building innovative relationships to foster environmental efficiency to tune themselves to the market economy.<sup>34</sup> It can also adopt a normative or systematic role to address fundamental economic, social and cultural challenges to redefine the role of business and society.<sup>35</sup> Furthermore, to maximise their impact in delivering public policy goals and priorities, Simon Zadek proposes that the government adopts the '*Principle of Corporate Citizenship*', the '*Principle of Competitive Citizenship*', the '*Principle of Civil Accountability*' and the '*Principle of Global Accountability*'.<sup>36</sup> While several of these measures and principles are practised, their consistency isn't guaranteed, especially in developing countries like India.

Besides their roles, from mandating to endorsing, the government must seek to address foundational systemic issues within the CSR framework.<sup>37</sup> Key determinants include policy predictability, clarity and transparency in governmental actions and intentions and combatting corruption. It bears the potential to significantly empower citizens and civil societies to tackle CSR challenges by fostering engagements and bridging gaps between businesses and governmental entities contributing towards social development.<sup>38</sup> While India has made substantial public sector efforts to advance environmental sustainability and ethical practices, it lacks tangible impact.<sup>39</sup> These developing countries should learn from CSR implementation in developed nations like the UK, USA and others and establish frameworks aligned with their societal realities. Collaborative efforts between developed and developing countries are essential to elevating CSR practices and recognising corporations' broader social responsibilities.<sup>40</sup>

#### **IV. EVALUATING THE IMPACT OF THE GOVERNMENT OF INDIA'S CSR POLICIES AND PROPOSING ENHANCEMENT RECOMMENDATIONS**

In developing economies like India, CSR theoretically complements government initiatives besides highlighting its inadequacies in addressing societal needs through traditional funding channels.<sup>41</sup> Prime Minister Narendra Modi's push for businesses to channel CSR funds into flagship programs, such as Swachh Bharat, underscores its significant expectation from the

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<sup>34</sup> *ibid.*

<sup>35</sup> Bhave (n 29) 18.

<sup>36</sup> *ibid.*

<sup>37</sup> Laura Albareda, Josep Maria Lozano, Antonio Tencati, Francesco Perrini & Atle Midttun, *Ethical Prospects-The Role of Government in Corporate Social Responsibility* (1<sup>st</sup> edn, Springer, 2009)

<sup>38</sup> *ibid.*

<sup>39</sup> Albareda, Lozano, Tencati, Perrini & Midttun (n 36).

<sup>40</sup> Wirba (n 7) 23.

<sup>41</sup> Khandelwal & Bakshi (n 20) 64.

private sector to bear the brunt of driving national policies aimed at public welfare.<sup>42</sup> Although their contributions to the sanitation sector have significantly impacted sterling general hygiene, they have also exacerbated regional inequalities. Funds are allocated to regions specific to their operations and markets rather than areas with more significant needs, neglecting the economically disadvantaged areas.<sup>43</sup>, thereby augmenting the need for a balanced approach when allocating CSR funds to specific regions.

A brief analysis of the CSR data reveals that education, healthcare and rural development have attracted significant CSR funds.<sup>44</sup> Based on the filings made to the Ministry of Corporate Affairs in the last seven years, the education sector accounted for approximately 37% of the total expenditure, followed by the health sector at 30% and rural development at 9.6%. The FY 2020-21 shows that over 44% of CSR expenditure went to 10 states, most of which have financial and industrial bases. In contrast, the north-eastern states of Assam, Manipur, and Meghalaya, the prerogatives of high poverty and development incidence, received merely 0.91% of the funds. In FY 2021, companies allocated Rs. 26,210 crores towards CSR initiatives, nearly doubling the expenditure seen in FY 2016, which stood at Rs. 14,542 crores, signalling a rising trend in CSR spending.<sup>45</sup>

However, Bain and Company's "Annual Philanthropy Report" testifies to the proliferated investment of CSR funds in India's bloated NGO sector, which lacks collaborative efforts, economies of scale, and streamlined strategies, leading to potential redundancy.<sup>46</sup> The ambiguity in penalties governing non-compliance has also encouraged companies to siphon off substantial contributions for themselves.<sup>47</sup> In 2012, the in-house auditor of the state-owned National Aluminium Company alleged the misuse of CSR funds to a favoured private university. Yet, the company received the "Best CSR Practices Award" in 2013.<sup>48</sup> They are also being utilised to advance the political objective of the government in power. Nineteen PSUs contributed Rs. 251.71 crore collectively towards constructing the ruling party's pet project, the

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<sup>42</sup>Rupa Subramanya, 'India's 2 Percent Solution' *Foreign Policy* (New Delhi, 28 July 2015) <<https://foreignpolicy.com/2015/07/28/modi-csr-corporations-bjp-welfare/>> accessed 15 December 2023

<sup>43</sup> *ibid.*

<sup>44</sup> Ministry of Corporate Affairs, *Monthly Newspaper* (Vol. 66, May 2023).

<sup>45</sup> *ibid.*

<sup>46</sup> 'Large Indian Business Failing on Spending 2% Profit on CSR' *India CSR- Corporate Sustainability and Responsibility* (Delhi, 24 July 2018) <<https://indiacr.in/large-indian-business-failing-on-spending-2-profit-on-csr/>> accessed 15 December 2023

<sup>47</sup> Avantika Rai, 'Failure of CSR in India' *TaxGuru* (Delhi, 11 October 2020) <[https://taxguru.in/company-law/failure-csr-india.html#\\_ftn20](https://taxguru.in/company-law/failure-csr-india.html#_ftn20)> accessed 15 December 2023

<sup>48</sup> PTI, 'Misuse of CSR Funds: PIL in HC Seeks Action against Ex-Minister' *India Today* (Noida, 23 October 2015) <<https://www.indiatoday.in/pti-feed/story/misuse-of-csr-fundspil-in-hc-seeks-action-against-ex-minister-499817-2015-10-23>> accessed 15 December 2023

“*Statue of Unity*”, from CSR funds preserved to conserve national heritage.<sup>49</sup> Another interesting development is the increased contributions to maintaining gaushalas in a country where no funds were allocated to reduce child mortality.<sup>50</sup>

Within institutionalised governance norms, the debate on whether the mandate prompts the State to cede its responsibilities to the private sector or enhance collaborations presents a counterintuitive dilemma. Despite the persistence of this debate, it’s quintessential that we recognise the government's pivotal role.<sup>51</sup> Against this backdrop, the proposed recommendations could be adopted to redefine India's contemporary CSR policy by gleaning insights from the CSR frameworks employed in Sweden, Denmark, and the UK. A pressing need exists to boost investment in social entrepreneurship and social enterprise to create a suitable environment for establishing a centralised CSR nexus. This is crucial to facilitating constructive stakeholder dialogue and fostering partnerships.

Additionally, India would greatly benefit from a unidimensional shift to a multifaceted CSR policy framework tailored to address implementational challenges in galvanising corporate engagements and endorsements. Academic and institutional research would also complement this framework. Policy changes should be evaluated for economic efficiency to ensure a balanced approach towards PSUs, besides defining its objectives and functions to enable a seamless transition. The GOI could also adopt a stakeholder-centric approach to empower government bodies, NGOs and business entities to shape policies and secure transparent deliberations on CSR promotion collectively.

## V. CONCLUSION

The CSR mandate is a step in the right direction in an economy still saddled with too many leftover socialist-era rules and regulations. However, the incumbent government’s continued dependence on businesses to fix a substandard governance system has reached tragicomic proportions. This necessitates a pivot towards a balanced and corporative strategy, which would broaden the scope of CSR activities and result in a more inclusive realisation of developmental objectives. Therefore, a comprehensive and integrated regulatory approach that transcends isolated interventions becomes indispensable for CSR to promote responsible business conduct.

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<sup>49</sup> Pushpa Sundar, ‘Using CSR Funds for Political Gain’ *The Wire* (New Delhi, 22 December 2018) (<<https://thewire.in/business/modi-government-csr-political-gain>> accessed 16 December 2023)

<sup>50</sup> *ibid.*

<sup>51</sup> Sundar (n 48).