



# India's Experiment with Legislating Corporate Social Responsibility: Reviewing the Decade of Legal Mandate

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**Abstract.** The enactment of the Companies Act, 2013 (the Act) caused a paradigm shift in the dynamics of corporate governance and regulation. The Act mandated that certain companies spend 2% of their average net profits over the past three years on CSR activities as enumerated in its Seventh Schedule. The shift from a voluntary to a mandatory regime was marked by the corporation's decision to adopt strict compliance. The Act institutionalised corporate philanthropic giving by introducing a mandatory provision for CSR. In the first decade of its implementation, the CSR provision has undergone various amendments, whereby the government has attempted to minimise bottlenecks and further create a conducive space for CSR in the era of dynamic changes, digitisation, climate change, and instability. Thus far, the provision has been a 'living law,' with changes made from time to time to facilitate effective adoption by corporations. The emerging legal landscape for CSR in India pushes for a transition from CSR to strategic CSR. Furthermore, mandating CSR, strengthening sustainability reporting procedures, and evolving ESG norms represent incremental steps towards the emerging business sustainability regime in India. The laudable completion of a decade of the mandatory CSR regime has been a mixed experience, offering valuable lessons as the country and the world approach the attainment of the 2030 Agenda. In this context, the present paper outlines the key milestones in the evolution of CSR law in India during its first decade of implementation (i.e., 2014-2024). It further analyses the trends in CSR spending and examines the challenges faced by Indian companies in integrating the mandatory CSR regime. This trend analysis and critical appraisal will not only enrich the existing literature but also explore the need for reforms, proposing a way forward for regime 2.0 to improve efficacy and impact.

**Keywords:** Corporate Social Responsibility, Companies Act, 2013, Decade under Review, India.

## 1 Introduction

In today's times, widespread globalisation ensures parity in procedures and practices across jurisdictions; however, India's variant of Corporate Social Responsibility is unique and fascinating due to its historical antecedents. Particularly, the business traditions, their interaction with the community, and the socio-economic changes that shaped Indian history [1].

For a long time, the corporate sector was viewed as distinct and isolated from society. This perception has undergone a complete shift in the last few decades, with companies now regarded as intrinsically linked to societal goals, aspirations and ideals. Rather, a growing understanding has emerged of the complementary nature of companies and society in terms of their co-existence, development and prosperity [2].

Corporate Social Responsibility (CSR) largely remains a voluntary set of practices defined by codes and principles encouraging responsible behaviour by companies [3]. This responsible behaviour goes beyond ethical conduct, encompassing the economic and social advancement of their workforce, local community and society at large [4]. Globally, there has been a growing trend to integrate CSR into the broader sustainability agenda, requiring companies to consider the economic, social, and environmental impacts of their activities in business decision-making. Under this model, the board of directors assumes greater responsibility as companies navigate towards achieving sustainability goals [5].

In line with global developments, India also initiated robust deliberations on CSR. In the initial phase of implementation, Indian companies were encouraged to voluntarily contribute to CSR through the promulgation of voluntary guidelines. These guidelines recognised the need for India Inc. to partner with the government in discharging its responsibilities towards nation-building [6]. The voluntary efforts, though, received significant government support; yet they failed to inspire companies to engage in CSR spending [7].

The Companies Act, 2013 (the Act) marked a watershed moment in Indian corporate governance jurisprudence. India's CSR landscape has undergone a paradigm shift upon the enactment of this Act. CSR transitioned from being voluntary philanthropy to a statutory obligation. This Act enabled the transition of the Indian corporate legal regime from a shareholder-centric model to a stakeholder-centric approach [8]. One of the key features of this law has been the introduction of the provision mandating a select class of companies to spend at least 2% of their profits towards CSR activities. The Act strongly advocates adherence to the principles of transparency, accountability, and good governance by requiring robust CSR disclosures of initiatives undertaken by companies.

India's experiment with mandatory CSR has garnered considerable attention and apprehension globally. This experimentation becomes relevant for the rest of the

world, not only because the country is one of the largest economies, but also because of the uniqueness of the institutionalisation of CSR within the company's corporate governance.

With this backdrop, the present paper outlines the key milestones in the evolution of CSR law in India during its first decade of implementation (i.e., 2014-2024). It further analyses the trends in CSR spending and examines the challenges faced by Indian companies in integrating the mandatory CSR regime. This trend analysis and critical appraisal will not only enrich the existing literature but also explore the need for reforms, proposing a way forward for regime 2.0 to improve efficacy and impact.

## **2 India CSR Story: Tracing Legal Evolution**

The concept of CSR is not novel for India. Researchers have argued that the ideals of corporate giving and philanthropy have been deeply rooted in the Indian tradition, culture and religion [9]. Due to the country's spiritual and cultural historical antecedents, charity, philanthropy, and corporate giving have remained a priority for several large companies in the country. Even without any legal requirements, companies were engaging in CSR initiatives by establishing endowment funds for welfare programs and extending their religious and cultural ethos [10]. Although these charitable activities and the discharge of social obligations by Indian companies often remained implicit, over time CSR engagements became more structured and broader in scope [11]. The spirit of charity, however, remained strong among a select group of companies, but the CSR program did not gain widespread acceptance from the corporate sector as a whole. Neither the CSR practices nor their disclosures become standardised [12].

The shift in the approach to CSR post-2009 could be attributed to the ongoing corporate governance reform process. The year 2009 is often referred to as the 'black letter' year for Indian corporate governance due to the revelation of the Satyam Scam, one of the biggest corporate frauds in the country's history. The corporate governance reform was triggered by the said debacle. Consequently, the Indian government and regulators began to strengthen corporate governance norms by shifting their focus to ethics and CSR. Under the reform, CSR was required to strike a balance between enhancing long-term shareholder value on the one hand and protecting the interests of various stakeholders, including creditors, employees, suppliers, consumers, and society at large [13].

In line with global developments, India also initiated its CSR regime on a voluntary basis. Ministry of Corporate Affairs (MCA), Government of India, promulgated the Voluntary Guidelines on Corporate Social Responsibility (Voluntary Guidelines) in 2009 [14]. The voluntary guidelines are intended to promote the internalisation of CSR as an integral part of business policy and corporate planning, under board oversight. On similar lines, in 2011, the MCA introduced the National

Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business (ESG Guidelines) to further integrate Environmental, Social, and Governance (ESG) norms within the corporate sector [15]. The ESG guidelines required companies to take up strategic measures, albeit voluntarily, to address the interests of stakeholders, including employees, environment and society [16]. One key change in these guidelines was the adoption of a more sustainability-centric CSR program, focusing on building responsible businesses as the nation moved toward achieving its sustainability goals.

What followed these voluntary guidelines were the mandatory interventions. In 2012, India's securities market regulator, Securities Exchange Board of India (SEBI), took another significant step towards integrating sustainability into corporate strategy. SEBI issued a circular mandating the 'top 100 listed companies by market capitalisation' on the National Stock Exchange and the Bombay Stock Exchange as on March 31, 2012, to file 'Business Responsibility Reports' as part of their Annual Reports [17].

Parallely, since 2009, the government has been preparing to overhaul the corporate law regime following the Satyam saga. The introduction of the Companies Bill 2009 and 2011 was expected to cause the biggest overhaul in the Indian corporate legal landscape [18]. The 2009 draft did not include any provision relating to CSR; however, upon the Standing Committee of Parliament on Finance's recommendations, the 2011 version introduced a dedicated provision for CSR [19]. The original provision required that larger companies contribute 2% of their 'average net profits' towards socially responsible activities and the requirement of mandatory reporting. However, it did not delve into the construct of CSR or its enforcement mechanisms, raising concerns regarding its implementation [20].

The CSR proposal did not go very well with India Inc either. The corporate backlash to the whole idea of making 'philanthropy' mandatory echoed across corporate houses and their federations [21]. The government, noting the sentiments of the corporate sector and the CSR experts, made the provision more structured, requiring the setting up of the CSR committee and consequently finalizing a CSR policy to be later implemented during the financial year. They even went ahead in giving clarity on the definition of CSR. These efforts by the government aimed to convince the corporate sector not to view CSR spending as an additional 'tax,' but as a means to partner with the State in its development agenda and nation-building.

### **3 Mandatory CSR in India and the Companies Act, 2013**

Amid this commotion, the Companies Act, 2013, came into effect on April 1, 2014, and became fully operational. This new law replaced the almost 60-year-old Companies Act of 1956, ushering in a new era of corporate governance for India [22]. Provisions pertaining to CSR were viewed as a path-breaking move, as legislators attempted to redefine the company-society relationship through this approach [23].

Section 135 of the Act requires that every company above a particular threshold level in terms of its net worth, turnover and profit constitute a CSR committee comprising the Board of Directors. These threshold limits apply to companies with a 'net worth of rupees five hundred crore or more, a turnover of rupees one thousand crore or more, or a net profit of rupees five crore or more during the immediately preceding financial year' [24]. The Board of such companies are required to 'ensure that the company spends, in every financial year, at least two per cent of its average net profits made during the three immediately preceding financial years [25].

The CSR committee, duly constituted by such companies, is entrusted with the responsibility of formulating, recommending, and later monitoring the company's CSR policy. The CSR policy outlines the activities to be undertaken, along with the expected expenditure to carry them out [26]. The CSR Policy serves as an action plan that guides the Board in selecting, implementing, and monitoring activities [27]. The Act further necessitates that 'companies give preference to the local area and areas around where they operate when spending the earmarked CSR amounts.'

Schedule VII, appended to the Act, prescribes the areas or subjects where CSR spending can be made. These activities revolve around the key agendas of national development and social welfare, with a focus on 'eradicating hunger, poverty, and malnutrition; promoting education; ensuring environmental sustainability; promoting gender equality; protecting national heritage; developing slum areas; implementing rural development projects; and managing disasters'[28]. Since the implementation of the CSR provision, the MCA has emphasised that the list in Schedule VII is recommendatory in nature, and that the enumerated activities must be construed liberally. In 2015, the report of the high-level committee on CSR suggested adding an 'omnibus clause' to the list of activities to accommodate any developmental emergent concerns, needs, and priority areas [29]. Later, another committee's recommendations emphasised the need for a holistic view and the implications of the activities mentioned for CSR, suggesting that the government may consider earmarking certain areas on the list as priorities by issuing directions in this regard [30]. Such inclusions would introduce flexibility into the current system of CSR mandates, which are sometimes regarded as rigid in their approach and implementation [31].

Section 135 specifically entrusts the board of directors with the responsibility of CSR spending. The Board is not only obligated to formulate and monitor the CSR policy, but is also required to disclose it [32]. Companies are required to disclose the outline of their CSR policy in the Board's annual report, along with its publication on the company's official website [33]. Some have argued that since the Board is placed at the 'epicentre' of the whole process, CSR becomes a matter of corporate governance [34]. Since the Board is made responsible for formulation, execution, monitoring, disclosure and ensuring that the CSR amount is spent on activities enlisted in the policy.

The ‘mandatory’ CSR regime in India actually began in a ‘comply-or-explain’ style, wherein, in the event of non-compliance, companies were required to provide reasons in their annual reports for not spending on CSR in a given year. Some referred to this as a ‘quasi-mandate,’ where the law was flexible regarding expenditure but mandated disclosure [35]. This approach, though, has undergone a change in the first decade of implementation. Now every company that is in default is liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, or one crore rupees, whichever is less. Also, every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less’ [36].

Rather, over the past decade, the government has made an effort to transform India's CSR landscape into a ‘living law’ that accommodates flexibility in compliance by India Inc. [37]. In this context, the following are a few of the key changes made over the past decade:

Allowing carry-forward of unspent CSR amount in case of an ongoing project, for a period of three financial years by transferring the same to a dedicated account within 30 days of the close of a financial year [38].

Requiring an impact assessment of the project has been a recent compliance measure to secure tangible social outcomes and ensure accountability by the board and other committee members. The requirement of an impact assessment is mandatory for ‘companies with a CSR obligation of Rs. 10 crores or more during the three immediately preceding financial years and applies to projects with outlays of over Rs. 1 crore or more’ [39].

Prescribing eligibility criteria and registration norms for the implementation agencies to secure transparency in the allocation of CSR funds. Trusts, societies, and not-for-profit companies involved in the implementation of CSR projects after April 2021 are required to be registered with the MCA upon fulfilling the requirements of a track record and registration under the Income Tax Act, 1961 [40].

Companies have been permitted to secure support from international organisations for the implementation of their CSR projects. Such engagement can involve designing, monitoring, or evaluating CSR projects, as well as building the capacity of CSR personnel [41].

The National CSR data portal was launched in 2018 with a view to providing seamless access to information on CSR spending. This portal also serves as a

repository of CSR resources, catering to policymakers, industry, implementation agencies, and researchers [42].

In 2022, MCA launched a dedicated exchange portal to serve as a platform for the companies and the implementation agencies to interact. It aims to address the challenges companies inface to finding suitable projects and/or implementation agencies. This national exchange portal caters to social welfare projects from across the country, serving as an e-marketplace for implementation agencies to display their ongoing projects and for companies to select from the listed projects [43].

These changes over the years have been remarked by a few as a game-changer [44]. The provision has been amended three times, in 2018, 2020, and 2021, to address stakeholder concerns and enhance its efficacy.

#### **4 Trends in CSR Spending: A Decade(2014 -2024) in Review**

CSR spending by companies in India has surged threefold in the first decade since the implementation of the CSR provision [45]. This steady growth in CSR spending is, of course, viewed as a sustained commitment by companies to the country's social and economic development. Increasing trends indicate a shift in the corporate mindset toward the social responsibility of business, whereby companies today aim to integrate and strategise CSR rather than treat it as mere compliance [46].

While this influx of CSR contributions can be attributed in part to the amendment of statutory provisions, the role of CSR as a means of forging a more intimate bond with society and thereby creating a public perception favourable to the corporate image cannot be overlooked.

This section analyses the CSR spending trends in the first decade of its implementation. The author has relied upon the data available on the National CSR portal maintained by the MCA, Government of India.

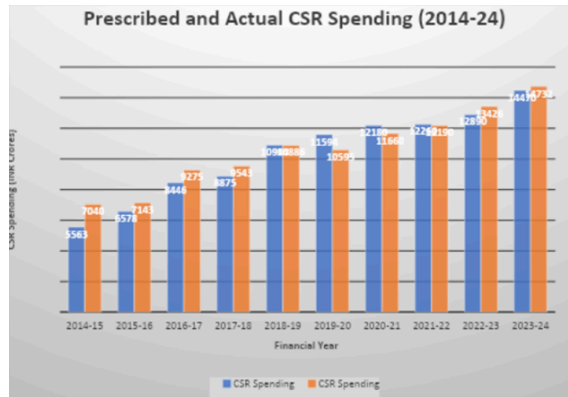
**Table 1.** Number of Companies Eligible for CSR (2014-2024)



The number of companies eligible to contribute towards CSR, based on their turnover, net worth, or profit, has been consistently increasing since 2014. This consistent increase in the number of eligible companies is indicative of the country's economic growth. Table 1 illustrates this consistent rise, except for the pandemic years of 2020, 2021, and 2022. The number of companies in 16548 rose from 27188 in 2014-15 to 27188 in 2023-24.

As for spending, the majority of companies covered under the CSR provision have been meeting or exceeding the prescribed spending requirements under the Act. Better compliance with the provision can be attributed to both push and pull factors.

Penalty provisions and disclosure requirements prescribed under the Act, of course, have been pushing the companies to comply. With a growing consensus of a positive correlation between CSR spending and market valuation, companies today view CSR spending as a strategic tool and aim to align it with their organisational vision [47]. This entails meaningfully engaging with stakeholders to address societal needs [48]. Evidence also suggests 'CSR spending with corporate reputation, whereby a socially responsible company enjoys a strong brand image and is able to attract consumers for the long term, strengthen competitive advantage, avoid activist boycotts and rigorous regulations of the government' [49].

**Table 2.** Prescribed and Actual CSR Spending (2014-2024)

Still, many companies have unspent CSR funds. There can be various reasons for such situations faced by companies. One of the most common challenges companies face is finding either a suitable project or an implementation partner. The recently introduced CSR exchange portal, established by the MCA, has been designed to fill this gap. Amounts can also remain unspent in cases where companies take up longer projects. In such cases, the Act permits carry forward of unspent amounts. Sometimes projects may even be held up by delays in receiving sanctions from government authorities [50].

Upon examining the data published by the MCA on its dedicated portal for CSR funding, the following observations can be drawn regarding the CSR spending pattern by the companies:

States with a greater presence of corporate enterprises have contributed more to CSR spending. For instance, Maharashtra, Gujarat, and Karnataka, known for their amiable business environments, account for a substantial share of CSR spending. There has been a willingness on the part of corporations to partner with the government on CSR projects in education, skill development, and healthcare.

Private companies engaged in banking, services, and manufacturing, followed by various public sector undertakings, have been leading the chart in CSR spending across various financial years. Though non-PSUs contribute a major share, i.e. 86% of the total contribution of CSR spending.

While the contributions being made in the traditional fields, such as eradication of poverty, malnutrition, hunger, etc., have reduced during the last 5 years (since 2019), the contributions being made in non-traditional fields such as art, culture, animal welfare, welfare of senior citizens, etc., have seen an exponential growth. These non-traditional subjects have a more visible attribute, and with

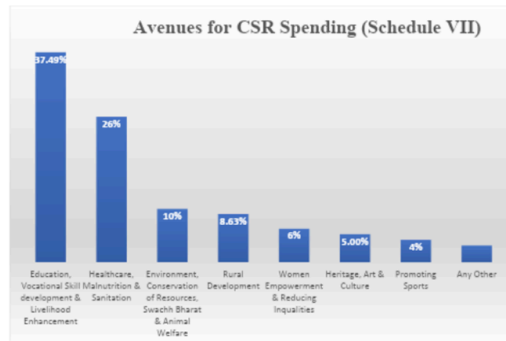
managerial expertise, a clear vision, and a dedicated team, companies can contribute more efficiently when they have timely and assured resources at their disposal. In traditional fields, companies' contributions are highly concentrated in education and healthcare, accounting for 55% of the total in 2024.

The non-traditional subjects in which the companies have shown a keen interest include development of sports, environment, animal welfare, conservation of resources, art and culture, etc., which have been slowly getting the attention of the companies, and there has been an inflow of CSR funds in these subjects, even though the growth in percentage would seem diminutive.

Traditional subjects have become more multifaceted, and subjects such as women's empowerment, eradicating hunger, poverty, and malnutrition have attracted contributions to CSR funding. While contributions to the PM Care Fund increased manifold during the COVID-19 pandemic and its aftermath, they have subsequently been scaled back to an extent. Instead, contributions towards the skill development of young people have seen wider appeal.

A significant increase in contributions has been observed in the field of climate action, which has grown by more than 70% over the past 7 years [51]. Companies have been involved in reforestation drives, watershed management, carbon offset projects, and renewable energy initiatives, which have significantly benefited the rural population [52]. Even the Reserve Bank of India, in its 2024 report on currency and finance, has listed equitable CSR as one of the key policy options to mitigate climate risk [53].

With respect to the non-spending of the CSR funds, amongst various reasons, long-term projects as well as lack of clarification in the formulation of the policy of the project are the major reasons that have been cited. Red tape appears to have infiltrated the CSR framework as well, with project approvals pending with government authorities [54].

**Table 3.** Avenues for CSR Spending under Schedule VII

## 5 CSR Regime 2.0: Reflections and Summing Up

India's experiment with mandating CSR is unique and one of the first in the world. Hence, it is mooted as the new wave of development in the realm of business social responsibility. The first decade of implementing the CSR regime has not only been a great learning experience but also a daunting one. The stakeholders in the CSR ecosystem, including legislators, executives, the corporate sector, and implementation agencies, have all contributed immensely to the evolution of the legal mandate.

This paper, while tracing the emergence of the legal mandate of CSR in the country, examined the trends in CSR spending by Indian companies. It has also analysed the implications of the amendments to the law on spending patterns. Since the government intends to initiate CSR reforms 2.0 by promoting ease of doing business, accountability, transparency, and expansion of the CSR net to cover more companies. This brief study will aid the stakeholders as they navigate the next phase of reforms.

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