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Legal Framework of Corporate Social Responsibility Under Section 135: Evolution and Impact

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ABSTRACT

The legitimate institutionalization of Corporate Social Responsibility (CSR) in India via Section 135 of the Companies Act, 2013 constitute a significant evolution in incorporated governance and regulatory philosophy. Here we undertake a complete doctrinal and comparative analysis of CSR as a legal obligation, tracing its historical evolution, examining its statutory framework, and evaluating its socio-economic and jurisprudential impact. By compiling CSR within constitutional principles and integrating comparative perspectives from the United States, the United Kingdom, and the European Union, the chapter highlights the uniqueness of India's mandatory CSR regime. Further, it employs critical theoretical lenses, including stakeholder theory, ESG jurisprudence, and law and economics analysis, to interrogate the normative foundations and practical implications of CSR. The chapter concludes that while Section 135 has successfully institutionalized corporate participation in social development, its long-term effectiveness depends on a shift from compliance-driven expenditure to outcome-oriented governance.

1. Introduction

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The evolution of Corporate Social Responsibility (CSR) reflects a fundamental transformation in the conceptualization of corporate purpose. Traditionally, corporations were observed as entities primarily designed to boost shareholder wealth. However, the increasing recognition of the social and environmental externalities of corporate activity has led to the emergence of CSR as a normative and regulatory framework. India's enactment of Section 135 of the Companies Act, 2013 marks a watershed moment in this evolution, transforming CSR from a voluntary ethical commitment into a statutory obligation.

The Indian model is distinctive in mandating that qualifying companies allocate a minimum of two percent of their average net profits toward specified social objectives. This legislative intervention raises complex questions regarding the role of corporations in a welfare state, the limits of regulatory intervention, and the balance between private autonomy and public interest.

This paper adopts a doctrinal, analytical and interdisciplinary approach to examine the legal framework of CSR under Section 135 and it's multifaceted impact. It situates the provision within its historical and constitutional context, analyses its statutory architecture, evaluates its impact and engages with comparative jurisprudence and critical theoretical perspectives.

2. Historical Evolution and Conceptual Foundations of CSR

CSR in India has deep historical roots, embedded in cultural traditions of philanthropy and social responsibility. Pre-colonial practices of charity and community welfare were later reinforced by industrial philanthropy during the colonial and post-independence periods. Influential business families institutionalized social welfare initiatives, often inspired by Gandhian principles of trusteeship, which conceptualized wealth as a social trust.

The post-liberalization era witnessed a shift toward structured CSR, driven by globalization, corporate governance reforms, and international norms. The issuance of voluntary guidelines by the Ministry of Corporate Affairs marked an intermediate stage in the evolution of CSR, paving the way for statutory codification.

The enactment of the Companies Act, 2013 represents the culmination of this evolutionary trajectory, embedding CSR within the legal framework of corporate governance.

In the Indian context, CSR finds deep roots in traditional practices such as daan (charity) and community welfare that is later reinforced by industrialists like Tata and Birla. Post-liberalization, CSR gained

prominence through voluntary guidelines and corporate governance reforms, culminating in statutory recognition under the Companies Act, 2013.

3. Conceptual Foundations of CSR

CSR, as a theoretical construct, emerged prominently in the mid-twentieth century. The term gained academic recognition through Howard Bowen's seminal work Social Responsibilities of the Businessman (1953), which emphasized the ethical obligations of corporations toward society.

The concept has evolved through multiple phases:

1. Philanthropic Phase – Characterized by voluntary charity and donations.
2. Trusteeship Phase – Influenced by Gandhian philosophy, emphasizing moral stewardship of wealth.
3. Strategic CSR Phase – Integration of social objectives into business strategies.
4. Regulatory CSR Phase – Legal mandates imposing enforceable obligations.

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4. Evolution of CSR Law in India

4.1 Pre-Statutory Phase

Prior to statutory codification, CSR in India was largely voluntary. The Ministry of Corporate Affairs (MCA) issued guidelines in 2009 and the National Voluntary Guidelines (NVGs) in 2011, encouraging businesses to adopt responsible practices.

4.2 Enactment of the Companies Act, 2013

The introduction of Section 135 marked a watershed moment in corporate regulation. It institutionalized CSR as a legal obligation, making India the first country to mandate CSR spending. CSR Education provision was designed to ensure that corporations contribute to national development goals, thereby operationalizing the Directive Principles of State Policy.

4.3 Post-Enactment Amendments

Subsequent amendments (notably in 2019 and 2021) strengthened the CSR framework by:

a. Mandating transfer of unspent CSR funds to specified accounts or government funds.
b. Introducing penal provisions for non-compliance.
c. Enhancing reporting and disclosure requirements.

These amendments reflect a shift from a "comply or explain" model toward stricter enforcement

5. Legal Framework under Section 135 of the Companies Act, 2013

5.1 Applicability and Thresholds

Section 135 establishes a comprehensive framework governing CSR obligations. It applies to companies meeting specified financial thresholds, namely as follows:

a. Net worth ≥ ₹500 crore
b. Turnover ≥ ₹1000 crore
c. Net profit ≥ ₹5 crore

The provision mandates the constitution of a CSR Committee, responsible for formulating policies, recommending expenditure, and monitoring implementation. The Board of Directors retains ultimate responsibility, including disclosure obligations and ensuring compliance.

A defining feature of the Indian model is the requirement that companies spend at least two percent of their average net profits on CSR activities. Schedule VII provides an indicative list of permissible activities, encompassing areas such as education, healthcare, environmental sustainability, and rural development.

Subsequent amendments have strengthened the framework by introducing penalties for non-compliance and mandating the transfer of unspent funds. These developments signal a shift toward stricter enforcement and accountability.

5.2 CSR Committee

The CSR Committee plays a central role in governance, tasked with formulating policies, recommending expenditures, and monitoring implementation. Its composition reflects principles of corporate accountability and oversight.

5.3 Role of the Board

The Board of Directors bears ultimate responsibility for CSR compliance, including disclosure obligations and ensuring that funds are utilized in accordance with statutory requirements.

5.4 Permissible Activities

Schedule VII of the Act outlines permissible CSR activities, encompassing areas such as education, healthcare, environmental sustainability, and rural development.

The broad scope of Schedule VII allows flexibility while aligning CSR initiatives with national development priorities

6. Constitutional and Jurisprudential Context

The legal framework of CSR must be understood within the broader constitutional philosophy of India. The Directive Principles of State Policy emphasize social justice, equitable distribution of resources, and environmental protection.

Judicial interpretation of fundamental rights, particularly Article 21, has expanded the scope of state and corporate obligations to include environmental and socio-economic considerations. In M.C. Mehta v. Union of India, the Supreme Court articulated the doctrine of absolute liability, imposing stringent obligations on enterprises engaged in hazardous activities.

Similarly, in Indian Council for Enviro-Legal Action v. Union of India, the Court reinforced the "polluter pays" principle, underscoring corporate responsibility for environmental harm. These judicial developments provide a normative foundation for CSR by linking corporate conduct with constitutional values.

Thus, CSR under Section 135 operates as an extension of constitutional morality, mobilizing private resources to achieve public welfare objectives.

7. Impact of Section 135: Institutional and Socio-Economic Dimensions

The introduction of mandatory CSR has had a transformative impact on corporate behaviour and social development. Empirical evidence indicates a substantial increase in corporate spending on social initiatives, reflecting the effectiveness of the statutory mandate.

CSR activities have become more structured and strategic, with companies adopting long-term projects, impact assessment mechanisms, and partnerships with civil society organizations. Transparency has improved through mandatory disclosure requirements, enhancing accountability and stakeholder engagement. All together we can categorize it as :

7.1 Financial Contributions

The introduction of mandatory CSR has significantly increased corporate contributions to social sectors. Empirical studies demonstrate a marked rise in CSR expenditure following the enactment of Section 135.

7.2 Institutionalization of CSR Practices

CSR activities have become more structured and strategic, with companies adopting long-term development projects and impact assessment mechanisms.

7.3 Transparency and Disclosure

Mandatory reporting requirements have enhanced transparency, enabling stakeholders to assess corporate performance in social responsibility.

7.4 Contribution to Development Goals

CSR initiatives have contributed to sectors such as education, healthcare, and environmental sustainability, complementing government efforts in achieving inclusive growth.

At a broader level, CSR has contributed to national development goals, particularly in sectors such as education, healthcare, and rural development. It has also influenced corporate governance by integrating ethical considerations into decision-making processes.

8. Challenges and Critiques

Despite its achievements, the CSR framework faces significant challenges. The mandatory nature of CSR has been criticized for reducing social responsibility to a compliance exercise, undermining genuine commitment.

The characterization of CSR as a “quasi-tax” raises concerns about corporate autonomy and the appropriate role of the state in welfare provision. Implementation challenges, including inefficiencies, lack of expertise, and uneven distribution of funds, further limit the effectiveness of CSR initiatives.

Additionally, the focus on expenditure rather than outcomes highlights the need for more robust impact assessment mechanisms.

9. Case Law Analysis and Comparative Jurisdictional Perspectives (India, United States, United Kingdom, and European Union)

The legal framework of Corporate Social Responsibility (CSR) under Section 135 of the Companies Act, 2013 must be situated within a broader comparative and jurisprudential context. While India has adopted a mandatory statutory model, other jurisdictions have largely relied on voluntary frameworks, fiduciary obligations, and disclosure-based regimes. A comparative analysis reveals both convergence in normative objectives and divergence in regulatory techniques. Judicial pronouncements across jurisdictions further illuminate the evolving role of corporations in balancing profit maximization with societal obligations.

9.1 Judicial Approach to Corporate Responsibility in India

Although Section 135 itself has not been extensively litigated, Indian courts have historically expanded the scope of corporate accountability through environmental and public law jurisprudence. In M.C. Mehta v. Union of India, the Supreme Court established the doctrine of absolute liability for enterprises engaged in hazardous activities, emphasizing that corporations owe a non-delegable duty to society. This principle reinforces the normative foundation of CSR by linking corporate conduct to societal welfare.

Similarly, in Indian Council for Enviro-Legal Action v. Union of India, the Court imposed heavy compensation on polluting industries, underscoring the "polluter pays" principle.These decisions demonstrate a judicial trend toward integrating corporate accountability with constitutional mandates, particularly under Article 21.

In State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, the Supreme Court emphasized the importance of Directive Principles in shaping economic policy, thereby indirectly supporting legislative measures such as CSR that promote social welfare.

Although CSR obligations under Section 135 are primarily regulatory, the broader judicial approach in India reflects a willingness to impose affirmative obligations on corporations to contribute to societal interests.

9.2 United States: Shareholder Primacy and Emerging Stakeholderism

The United States has traditionally adhered to the doctrine of shareholder primacy, wherein corporate directors are obligated to act in the best interests of shareholders.

This principle was famously articulated in Dodge v. Ford Motor Co., where the Michigan Supreme Court held that a corporation must primarily serve the profit interests of its shareholders.However, subsequent jurisprudence has introduced nuance.

In Shlensky v. Wrigley, the court upheld managerial discretion in refusing to install lights in a baseball stadium despite potential profit gains, recognizing that directors may consider broader stakeholder interests.

Further, eBay Domestic Holdings, Inc. v. Newmark reaffirmed shareholder primacy in closely held corporations but acknowledged the legitimacy of pursuing long-term corporate interests.

In recent years, the emergence of "benefit corporations" in several U.S. states has signaled a shift toward integrating social objectives into corporate governance. These entities are legally permitted to pursue public benefits alongside profit, thereby institutionalizing CSR-like principles without mandating expenditure.

Thus, the U.S. model remains largely voluntary, relying on fiduciary flexibility rather than statutory compulsion.

9.3 United Kingdom: Enlightened Shareholder Value

The United Kingdom adopts an intermediate approach through the concept of "enlightened shareholder value," codified in Section 172 of the Companies Act 2006. This provision requires directors to act in a manner that promotes the success of the company while having regard to factors such as employee welfare, environmental impact, and community interests.

Judicial interpretation of Section 172 has been limited, but its normative significance lies in expanding the scope of fiduciary duties. In Regentcrest plc v. Cohen, the court emphasized that directors must act in good faith in promoting the success of the company, a subjective standard that allows consideration of stakeholder interests.

Similarly, in People & Planet v. HM Treasury, the court rejected a challenge to government investment policy but acknowledged the relevance of ethical considerations in decision-making.

The UK framework does not mandate CSR spending but relies on disclosure and governance mechanisms, including non-financial reporting requirements under the Companies Act and related regulations. This approach emphasizes transparency and accountability rather than compulsion.

9.4 European Union: Regulatory Harmonization and Sustainability Focus

The European Union has developed a comprehensive CSR framework centered on sustainability, human rights, and corporate accountability. Unlike India's expenditure-based model, the EU emphasizes disclosure and due diligence.

The Non-Financial Reporting Directive (NFRD), now replaced by the Corporate Sustainability Reporting Directive (CSRD), requires large companies to disclose information on environmental, social, and governance (ESG) matters.

Judicial developments at the national level further reinforce CSR principles. In the landmark Dutch case Milieudefensie v. Royal Dutch Shell plc, the Hague District Court held that Shell had a legal obligation to reduce its carbon emissions in line with global climate goals. This decision represents a significant expansion of corporate responsibility, effectively imposing climate-related duties on private entities.

Similarly, in Vedanta Resources plc v. Lungowe, the UK Supreme Court (interpreting cross-border liability within a European context) recognized that parent companies may owe a duty of care for the actions of their subsidiaries abroad.

This judgment has far-reaching implications for corporate accountability in global supply chains.

The EU's proposed Corporate Sustainability Due Diligence Directive further strengthens obligations by requiring companies to identify, prevent, and mitigate adverse human rights and environmental impacts.

9.5 Comparative Analysis

A comparative evaluation of CSR frameworks across India, the United States, the United Kingdom, and the European Union reveals distinct regulatory philosophies:

(a) Nature of Obligation

1. India: Mandatory expenditure-based CSR (2% rule)

2. United States: Voluntary, market-driven CSR with emerging benefit corporations

3. United Kingdom: Fiduciary duty-based stakeholder consideration

4. European Union: Disclosure and due diligence-based regulatory model

India's approach is unique in imposing a quantified financial obligation, whereas other jurisdictions emphasize governance and transparency.

(b) Role of Judiciary

Judicial intervention plays a critical role in shaping CSR norms:

1. Indian courts actively impose environmental and social obligations

2. U.S. courts prioritize shareholder interests but allow managerial discretion

3. UK courts adopt a deferential approach to directors' judgment

4. EU jurisprudence increasingly imposes substantive obligations on corporations

(c) Enforcement Mechanisms

India relies on statutory penalties and regulatory oversight, while other jurisdictions depend on:

1. Market discipline
2. Shareholder activism
3. Disclosure requirements

The EU's emerging due diligence regime, however, indicates a shift toward stricter enforcement.

(d) Philosophical Foundations

1. India: Social justice and constitutional welfare state

2. United States: Economic efficiency and shareholder primacy

3. United Kingdom: Balanced stakeholder approach

4. European Union: Sustainability and human rights

These philosophical differences explain the divergence in regulatory strategies.

10. Theoretical Perspectives

10.1 Stakeholder Theory

Stakeholder theory challenges the traditional shareholder-centric model by recognizing the interests of multiple stakeholders, including employees, consumers, and communities. CSR under Section 135 aligns with this perspective by mandating corporate contributions to societal welfare.[22]

10.2 ESG Jurisprudence

Environmental, Social, and Governance (ESG) considerations have become central to corporate regulation. CSR serves as a precursor to ESG frameworks, integrating sustainability and ethical governance into corporate practice.

10.3 Law and Economics Analysis

From a law and economics perspective, CSR can be viewed as a mechanism for internalizing externalities. By mandating social expenditure, Section 135 seeks to correct market failures and promote efficient resource allocation. However, the rigidity of the 2% rule may lead to inefficiencies and suboptimal outcomes if not aligned with corporate capabilities.[24]

11.Critical Evaluation

The Indian CSR model represents an innovative regulatory experiment that combines elements of compulsion and discretion. It highlights both strengths and limitations. Its strengths lie in mobilizing resources and institutionalizing social responsibility. However, its effectiveness depends on the quality of implementation and the alignment of corporate incentives with societal objectives. While the mandatory framework ensures resource mobilization.

Comparative analysis suggests that while India's approach ensures measurable contributions, it may benefit from incorporating elements of flexibility, transparency, and outcome-based evaluation found in other jurisdictions.

Conversely, disclosure-based systems in the EU and UK promote transparency but may not guarantee substantive outcomes. Judicial developments, particularly in the EU, suggest a growing trend toward holding corporations accountable for global challenges such as climate change and human rights violations. This raises important questions about the future trajectory of CSR law in India, including the potential expansion of judicial oversight.

12. Conclusion

The legal framework of CSR under Section 135 of the Companies Act, 2013 marks a significant milestone in the evolution of corporate law. By mandating corporate participation in social development, it redefines the role of corporations within a constitutional democracy.

While the framework has achieved notable success, it also raises important normative and practical challenges. The future of CSR lies in balancing regulatory mandates with voluntary commitment, ensuring that corporate responsibility becomes an integral aspect of business ethics.

A shift toward impact-oriented governance, supported by robust monitoring and comparative learning, will enhance the effectiveness of CSR as a tool for sustainable development. The legal framework of CSR under Section 135 of the Companies Act, 2013 represents a distinctive approach within the global regulatory landscape. Comparative analysis demonstrates that while India has adopted a mandatory expenditure-based model, other jurisdictions rely on fiduciary duties, disclosure requirements, and emerging due diligence obligations.

Judicial pronouncements across jurisdictions reveal an increasing recognition of corporate responsibility toward society, albeit through different doctrinal pathways. The convergence of these approaches suggests a gradual evolution toward a more integrated model of corporate accountability that balances economic objectives with social and environmental imperatives.

For India, the challenge lies in refining its CSR framework to incorporate global best practices, particularly in areas such as impact assessment, sustainability reporting, and transnational accountability. Such reforms would enhance the effectiveness of CSR while preserving its unique contribution to corporate governance and social development.

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