CSR from the Top-Down: Six Years of Mandatory Corporate Social Responsibility in India

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Draft of May 1, 2020†

Abstract

In 2013, India passed legislation that requires thousands of companies to spend a portion of their profits on corporate social responsibility (CSR). The mandate, which came into effect in 2014 as Section 135 of the Companies Act, has led to sharply increased company spending on community development projects and thrust firms into new roles as development donors and implementers. Section 135 is the first CSR spending requirement in the world and fits uneasily into dominant conceptions of CSR, which emphasize its voluntary nature and origins in civil society campaigns. In particular, the origins of Section 135 lie in the Indian state rather than in civil society and give an outsize role to the state in setting and monitoring corporate social performance. Firms have generally complied with the mandate, and the sharp increase in corporate spending has led to a scramble for CSR funds among government agencies and Indian non-profits.

Keywords: Corporate Social Responsibility, India, Civil Society, Development

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†The author gratefully acknowledges the support of the American Institute of Indian Studies, the GWU Center for International Business Education & Research (GW-CIBER), and the Sigur Center for Asian Studies. Mircea Raianu, James Sharrock, and Emmanuel Teitelbaum generously offered detailed comments on earlier drafts. Remaining shortcomings and errors are my own.

Introduction

In 2013, amid corporate scandal and public concern about crony capitalism, India passed unique legislation that requires companies to spend a portion of their profits on corporate social responsibility (CSR). The legislation – contained in Section 135 of the Companies Act – came into effect in 2014, and since that time companies have reported spending more than $6.5 billion on qualifying projects.[1] Not only is the legislation unique in the world in imposing a CSR spending mandate, but the kind of CSR required is of a specific sort: with few exceptions, companies are required to directly implement or sponsor development projects in heath, sanitation, education, and other defined categories. India's experiment with mandatory CSR has potential to become an exportable "Indian model"; Nepal passed mandatory CSR spending legislation in 2016,[2] and government officials in Myanmar have reportedly discussed a similar provision (Interview 1, 2019).

Section 135 represents a striking departure from standard models of CSR's emergence and development: whereas contemporary CSR practice is generally treated as having emerged bottom-up, from campaigner and consumer pressure on multinational corporations, the Indian experience has been remarkably top-down, with a leading role for state mandates and limited influence of civil society. Six years after it came into effect, the mandate is remaking relations among business, state, and society in India. Company spending is shaped by government guidance and, increasingly, by explicit requests for financial and operational partnerships from government bodies. The practice of many firms of channeling projects through non-governmental organizations (NGOs) is also rapidly changing the culture and incentives of Indian non-profits. This paper demonstrates the distinctiveness of the Indian model and how it is reshaping relations between business, state, and society in three areas:

[1] Author's calculations based on the comprehensive Centre for Monitoring of Indian Economy Prowess$_{dx}$ dataset of corporate financial reports.

[2] Nepal introduced a one-percent spending mandate for large firms in the 2016 Industrial Enterprises Act.

expanding corporate participation in social development; new initiatives by the state to attract corporate funding for government priorities; and the increased dependence of India's non-profit sector on CSR money.

CSR from the Top-Down

Section 135 requires companies that exceed any of three thresholds of revenue, profitability, or net worth to publish a corporate social responsibility policy and to spend at least two percent of the average before-tax profits of the proceeding three fiscal years on CSR activities. The thresholds that trigger mandatory CSR spending are revenue of ten billion rupees, net worth of five billion rupees, or net profit of fifty million rupees.[3] These thresholds apply to Indian firms, including India's public sector enterprises, and to the Indian operations of multinational corporations. The Ministry of Corporate Affairs (MCA), which is responsible for overseeing the implementation of Section 135, reports that around 21,000 companies exceeded at least one of these thresholds in fiscal year 2018-19 (Ministry of Corporate Affairs, Government of India 2019, 22). Section 135 spending is now part of firms' audited financial statements and companies are required to file annual reports to the MCA detailing their spending. Firms that fail to meet the two percent threshold must furnish a statement explaining why they have not complied; the mandate is thus sometimes referred to as a "comply-or-explain" model. In 2019, the Companies Act was amended to require that unspent funds be either deposited into an approved government fund or that the company open an Unspent Corporate Social Responsibility Account and spend the funds within three fiscal years.

Section 135 requires CSR spending of a particular sort: it must be outside the normal course of company operations and cannot simply be a one-off event such as a charitable contribution; with few exceptions, companies are to implement — whether directly or through government or

[3]At current (September 2019) exchange rates, these correspond to approximately $140 million in revenue, $70 million in net worth, and $700,000 in profits. All exchange rates are calculated at 1 USD = 72 INR.

external implementers such as government bodies or non-governmental organizations (NGOs) — project-based activities with measurable outcomes. This distinguishes firm spending under Section 135 from the other kinds of business responsibility efforts that firms undertake, such as improving labor and environmental performance. To count toward a firm's obligations under Section 135 projects must fall under a list of subject areas enumerated in Schedule VII of the Companies Act, including rural development, sanitation, women's empowerment, education, and public health (see Table 1).[4] Thus, Section 135 has turned companies into development actors and donors in their own right.

[Table 1 about here]

Although most major public-sector and private firms sponsored community development programs prior to the passage of Section 135, these programs were typically modest in size. The two percent spending mandate has markedly increased the proportion of profits that firms expend on qualifying projects. Figure 1 shows the size of the median CSR program among the 100 companies that have spent the most, in aggregate, since the passage of Section 135.[5] In 2011-12 and 2012-13, the median company for which data is available spent around 0.7 percent of its average three-year profit on activities that qualify as CSR under the Section 135 definition. Only four companies reported spending two percent or more. Median spending increased to over one percent in the year following the passage of the new Companies Act, and stabilized at the required two percent level by the second year of the mandate. The effect on spending is comparable for privately-owned and public-sector enterprises. This jump very likely understates the effect of the Act for private sector firms, as firms with larger CSR

[4] Firms have the option of contributing to specified government funds, such as the Prime Minister's Relief Fund and the Clean Ganga Fund. In practice, a small and declining percentage of spending has been directed toward these funds: less than six percent of total CSR spending in the first four years of the mandate.

[5] Although companies were not required to disclose CSR spending in their audited financial statements prior to the implementation of the CSR Rules in fiscal year 2014-15, a majority of firms included these figures as part of their narrative annual investor reports.

programs were more likely to disclose spending amounts in the period prior to the CSR rules coming into effect.

[Figure 1 about here]

Section 135 does not fit neatly into canonical accounts of CSR emergence and practice. Reaching a consensus definition of CSR has proven elusive (Sheehy 2015) and the literature on CSR is highly fragmented across disciplinary lines (Aguinis and Glavas 2012). However, a comparison with a particularly influential model of CSR's emergence and practice puts the characteristics of India's unique CSR landscape into relief. In particular, I compare Section 135 with a "global governance" account of CSR. In this archetypal model, CSR consists of the voluntary self-regulation and philanthropic initiatives of companies, especially private-sector, multinational firms headquartered in the global north and having supply chains principally in the global south that produce goods for export to consumers in the global north. These initiatives are undertaken under pressure from civil society and partly in response to fear of consumer backlash. A classic example is the adoption of voluntary labor standards by transnational apparel and footwear brands in response to the anti-sweatshop movement in the United States and European Union in the 1990s. In an influential review of competing definitions and concepts of CSR, Benedict Sheehy (2015) suggests that it is "a type of *international private self regulation*... reliant primarily on private resources. That is, private actors have been the driving force in the creation, adoption, administration, and adjudication of standards."

Crucially, in the archetypal model, global CSR practices are treated as having emerged from bottom-up civil society pressure rather than from government regulation or the explicit threat thereof. John Ruggie (2008, 243-4) argues that, as global economic liberalization resulted in a less restrictive operating environment for multinational firms, civil society organizations recognized a "growing imbalance between corporate rights and obligations." "As governments were creating the space for transnational corporations to operate globally," he writes, "other social actors have sought to infuse that space with greater social responsibility."

These core features make CSR a classic instance of non-state governance. Through CSR initiatives, firms and NGOs expand the corporate sector's role in service delivery and fill a regulatory vacuum in environmental, labor, and social standards at the global and national levels. Optimists suggest that the corporate sector's global reach and ability to make rapid decisions allow it to address global environmental and labor challenges in ways that may be beyond the capacity of governments and international organizations (Ruggie 2014; Vandenbergh and Gilligan 2017) and that companies may have particularly innovative ways of addressing service delivery challenges where the state is weak (Kolk and Lenfant 2012).

India's CSR landscape challenges the bottom-up, global governance model of CSR in five respects. First, Section 135 has made mandatory philanthropic and developmental spending that, in all other countries, are voluntary initiatives of firms. In India, large business houses have undertaken social and developmental projects since the early twentieth century (see Raianu 2017, ch. 6 for an overview). To a large extent, this sort of CSR has become a global norm, especially for multinational companies engaged in resource extraction (Rajak 2011). Section 135 has institutionalized this norm by making such spending mandatory, establishing a minimum spending amount based on firm profitability, introducing penalties for non-compliance, and specifying sectors for spending. Firms' discretion in how they allocate Section 135 funds is bounded and the MCA has taken action against firms that have failed to comply with the requirement. Whereas the archetypal model sees CSR as essentially discretionary, India has made it mandatory.

Second, the large majority of spending under Section 135 is by Indian firms rather than foreign multinationals. Of the top 100 spenders, only 11 are foreign multinationals or their subsidiaries, which together account for less than five percent of spending of the top 100. Many of these firms are in the services and technology sectors rather than in natural resources or manufacturing, the sectors of traditional focus in scholarship on CSR. Section 135 is a story of Indian firms, producing largely (though by no means exclusively) for the Indian market, undertaking developmental activities within India.

Third, many of the largest CSR spenders in India are public-sector enterprises rather than private firms. Spending by India's central public sector enterprises accounts for more than a quarter of cumulative CSR spending since 2014-15, or around $1.7 billion. Including companies owned by state governments, such as road transport corporations and electricity boards, and statutory bodies such as the Export-Import Bank of India, spending by public-sector companies accounted for $1.88 billion, or nearly 29 percent of total spending.

[Table 2 about here]

Fourth, the primary impetus for the recent expansion of CSR in India has come from the Indian state rather than pressure from civil society. The proximate origins of the Section 135 mandate lie in India's public sector enterprises, in particular the Steel Authority of India (SAIL), which adopted a two-percent spending policy in March 2006. By October 2009, the Department of Public Enterprises (DPE) was considering a proposal to extend this model to all public sector enterprises, which would be required to spend up to five percent of profits on CSR projects. This idea appears to have diffused into ongoing discussions about draft legislation to replace the Companies Act of 1956.[6]

In interviews with the author, senior civil servants involved in the drafting of Section 135 and its implementing rules generally pointed to ministerial-level leadership and the transfer of bureaucrats from public sector enterprises to the MCA as important sources of ideas. In particular, the MCA, DPE, and senior political leaders have been the key actors in incentivizing the adoption of and deepening of CSR norms and practices across the

[6]Section 135 is only a small part of the Companies Act, whose 470 articles lay out a wide range of requirements in corporate governance, registration, and financial reporting, and government enforcement thereof.

Indian corporate sector. Afsharipour (2011) notes that the Satyam Computer accounting scandal, sometimes dubbed as India's Enron, brought concerns about corporate governance in post-liberalization India to the political foreground.[7] The MCA took the initiative to push for the wholesale revision of the Companies Act immediately following the revelation of fraud at Satyam in January 2009, and shortly thereafter issued brief Corporate Social Responsibility Voluntary Guidelines.[8] Consumers groups, corporate watchdogs, and human rights organizations — the instigators of CSR efforts in the archetypal model — were not important actors in promoting Article 135 and, indeed, have frequently been skeptical of the Indian CSR model as a "box-ticking" exercise that diverts attention from a more holistic assessment of the role of business in society (Corporate Responsibility Watch 2015, 6).

Fifth, avoiding consumer backlash against labor and environmental practices is not a principal motivation for most Indian firms; with few exceptions, Indian consumers have not been particularly sensitive to the issues of labor standards and environmental degradation that have motivated organized civil society campaigns targeting Western multinationals. Indian firms have not until now faced the threats of consumer boycotts that have spurred firms in the West to act on labor and environmental standards. Rather, since the development of modern ideas of philanthropy and corporate trusteeship in the early twentieth century, the core motivation behind CSR practices for Indian firms has been to defend capitalists' "interests in autonomy from sovereign regulation" (Birla 2009, 106). The remarkable acquiescence of the corporate sector to the two percent spending mandate, though puzzling in the international context, continues a decades-long history of large business houses using CSR as a means of

[7] Satyam Computer Services was among India's largest software services companies. In January 2009, the company's founder and chairman, Ramalinga Raju, admitted to vastly inflating the company's operating profits over a period of several years and abruptly resigned. The revelations shook confidence in corporate governance and India's auditing system. The fraud was eventually shown to have amounted to $1.7 billion and resulted in the Securities & Exchange Board of India banning the firm's external auditor (PriceWaterhouse Coopers) from conducting audits of listed companies for a two-year period.

[8] The MCA has substantially revised and rebranded the Guidelines twice, once in 2011 and again in 2019. The current iteration is the National Guidelines on Responsible Business Conduct.

defending an autonomous sphere for private enterprise and responding to political pressures for business to directly support the government's development objectives (Raianu 2016, 2017).

In the five ways reviewed above, India's CSR landscape is distinct from the archetypal global-governance model. In the Indian model, CSR consists of a mixture of mandatory and voluntary initiatives of companies, including public and private sector firms, largely headquartered in India and producing goods and services for consumption in India and overseas. These initiatives are undertaken in response to state mandates. The contemporary practice of CSR in India is thus distinctive for having emerged through a top-down process led by state and business elites, for its focus on the domestic rather than overseas activities and supply chains of firms, and the so far incidental rather than instrumental role of civil society in establishing and monitoring CSR norms.

Section 135 may be best interpreted as a government initiative to nudge the corporate sector as a whole to earn a "social license to operate" (Henisz, Dorobantu, and Nartey 2014; Demuijnck and Fasterling 2016). Reliant on corporate India to drive growth, yet faced with a crisis of confidence in corporate governance, a yawning gap between the corporate world and the large majority of Indians who toil in the informal sector, and vast unmet development needs, the state has mandated community engagement of the sort normally undertaken by firms in the natural resources and heavy manufacturing sectors to safeguard immobile investments in mines, oil fields, and other politically vulnerable operations. As a retired MCA official involved in drafting the CSR rules put it, "The spending is to show that corporates also care about issues of common concern... There are farmer suicides and vast discontent in the rural sector... It goes back to Gandhian thought. Development is not only the business of government but of everyone" (Interview 2).

Six years of Section 135

In evaluating the first six years of Section 135, I briefly summarize the aggregate data on company CSR spending, which shows generally fair and improving compliance with the letter of the law. I then discuss two emerging themes in Section 135 spending that are not apparent from the aggregated CSR disclosures. First, the rise of corporate funding for civil society organizations, and the decreasing role of international aid donors, may be shrinking the space for rights-based and community organizing approaches to development work. Second, India's state and central governments are making increased efforts to mobilize CSR funds to support government agendas. Government influence over CSR spending potentially subjects corporate projects to some level of accountability even as it threatens to reduce the scope for companies to provide novel approaches to development challenges.

Compliance and aggregate flows

All firms that spend under Section 135 are required to file annual disclosures to the Ministry of Corporate Affairs (MCA) in a prescribed format stating the locations, sectors, and amount of spending.[9] Firms also report the amount of spending toward the two percent requirement as part of their annual audited financial statements. The financial statements offer fairly good data on whether companies are meeting their spending requirements. These data suggest that companies have generally complied with the two percent spending mandate, and India's largest companies are, in aggregate, exceeding the required spending, even as a minority are not reaching the required amount. A Confederation of Indian Industries (2018) study of corporate financial returns found that, between fiscal year 2014-15 and 2016-17, overall spending rose from 80 percent of what was required by the mandate to 92 percent.

Although thousands of companies report Section 135 spending each year, spending is

[9] The MCA makes these filings available in a searchable database. The database can be accessed at https://csr.gov.in/CSR/.

heavily top-weighted, with the top 100 spenders accounting for nearly three-quarters of total expenditures. A KPMG survey of the top 100 Indian companies by market capitalization found that in 2017-18, 95 were required to spend on CSR and that the other five were spending even in the absence of a legal requirement to do so. In total, they exceeded the required spending by 12 percent. Of the 100 companies, 67 spent two percent or more on CSR, and 14 spent less than one percent. All but six of the 33 companies that did not reach the two percent threshold furnished a statement explaining their failure to do so, as required by law.

The Companies Act stipulates that firms prioritize spending in their areas of operation. Consistent with this requirement, per capita CSR spending is much higher in states with high corporate presence such as Maharashtra. However, these states are in general not the areas where India's greatest human development needs are concentrated. Of the ten Indian states with the lowest human development indices (HDI), only three are among the top ten per capita CSR recipients: Andhra Pradesh, and the resource-rich but underdeveloped states of Odisha and Chhattisgarh, where mining makes up a substantial fraction of the economy. Maharashtra – home to the important economic centers of Mumbai and Pune – accounted for expenditures greater than those of the next three states combined.

[Table 2 about here]

Many large Indian companies had CSR programs prior to the introduction of Section 135, raising the question of how much the two-percent mandate matters to companies that already engaged in qualifying spending. (As demonstrated earlier, the mandate led to sharply increased spending by most firms.) In interviews, I found that Section 135 mattered for these companies in at least three ways. First, several CSR managers described a shift from an industrial relations approach to CSR – one that that focused on workers' families and a plant's immediately surrounding communities – to broader, more structured initiatives. For industrial and manufacturing firms, CSR efforts focused on mitigating local opposition to operations and improving relations with workers. These projects were often designed and undertaken at the level of the plant and were largely ad hoc projects, for example supporting the pet projects of local politicians, opening the plant clinic to surrounding communities, and undertaking locally popular and visible initiatives such as sponsoring cultural or religious festivals. Now, although plant managers often retain a budget for such activities, Section 135 has led companies to coordinate projects across facilities. These are likely to be planned, managed, and evaluated from headquarters, with correspondingly greater influence of professionalized CSR discourses and practices.

Second, the requirement that firms meet or exceed a spending threshold has led them to regularize their grant-making. Previously, many firms made grants on an ad-hoc basis. Now, they are more likely to have a fixed budget, issue calls for proposals, and operate their grants on regular funding cycles.

Third, firms have deepened the integration of CSR and human resources management. Many companies see Section 135 spending as an opportunity for employee engagement. This includes such one-off activities such as employee volunteer days as well as utilization of company expertise in designing and implementing projects. For example, a Bangalore-based company with a large engineering department utilized its own staff to design a project to reclaim a badly polluted lake. An industry representative noted that the desire to engage staff in CSR projects has reinforced the tendency for firms to support projects in areas around their operations rather than in states or districts that may have stronger development needs.

Corporate money and civil society

Among Section 135's most important effects has been to increase the amount of corporate funding for India's civil society sector. The CSR spending mandate has come at a time of particular financial instability for NGOs; funding from overseas foundations, governments, and international non-profits – historically the major source of money for NGOs, especially those working from rights-based or social-justice-oriented frameworks – is under government scrutiny and increasingly seen as a political liability for recipients. The CSR mandate has therefore touched off a scramble among Indian non-profits to bridge the substantial cultural gap between the corporate and non-profit sectors and to make themselves and their programs attractive to potential corporate donors. This shift may have major long-term effects on which NGOs survive, how they work, and their ability to represent the interests of diverse sectors of society. In particular, while the rise of corporate funding for NGOs presents clear opportunities for fundraising, it also carries the risk that Indian civil society becomes more attuned to the interests of its numerically small but deep-pocketed corporate donors than to the interests of Indian society more broadly.

A majority of firms spend their CSR money at least in part through NGOs. In a study of the fiscal year 2016-17 CSR reports of publicly traded firms, the Confederation of Indian Industry found that more than half channeled their spending exclusively or in part through external agencies, typically non-profits (Confederation of Indian Industry 2018, 27).[10] Corporate funding is now the major potential source of funds for Indian civil society, with Section 135 spending surpassing foreign institutional contributions to NGOs. In 2017-18, Indian non-profits reported overseas institutional contributions that totaled around \$1.27 billion, against total Article 135 spending of \$1.89 billion.[11]

Interviewees note that NGOs offer at least three benefits to firms: subject matter expertise, community networks, and the ability to confer legitimacy upon corporate-sponsored projects. These benefits are particularly strong in communities where firms have few pre-existing links

[10] Other firms implemented projects directly or channeled funds to firm-affiliated trusts.

[11] Ministry of Corporate Affairs and author's calculations from data collected from the Ministry of Home Affairs FCRA contributions database: https://fcraonline.nic.in/home/index.aspx. A direct comparison of these totals is not possible, since not all corporate funds are channeled to NGOs, and a substantial portion of overseas contributions are to religious or sectarian groups that normally would not receive Section 135 funds. Nevertheless these figures indicate that Article 135 spending is comparable to foreign sources of funds for Indian non-profits.

or for projects that rely on social mobilization, particularly of marginalized groups. These benefits are similar to those that have been noted for government-NGO partnerships in service delivery (Brinkerhoff 2003). For companies seeking to do CSR work across many districts or states, working with existing NGOs may also be substantially less expensive than hiring field staff in each location.

NGOs of a range of sizes and areas of work have increased their efforts to attract corporate funds. These efforts include appointing company officers to non-profit boards, hiring staff with corporate experience, and establishing booths at the many CSR exhibitions that take place each year. Some NGOs also go through a process called empanelment, in which an outside organization assesses their financial controls, governance, and programming, and upon approval enters them into a database of potential partners to which companies can subscribe. Several organizations, such the Mumbai-based Dasra Foundation, have programs to empanel NGOs, connect companies with project implementers, and assist non-profits with corporate fundraising.

Even as some NGOs succeed in raising money from corporations, within the NGO sector itself there is widespread concern that the sector's increased reliance on corporate money is accelerating trends toward a more quiescent Indian civil society, one unable to openly promote democracy and social justice. More conservative segments of Indian society and portions of the Indian state have taken a skeptical view of NGOs that work in advocacy, human rights, or that seek to organize historically marginalized groups. The role of overseas funding for NGOs has been particularly sensitive and has enabled accusations that NGOs represent a "foreign hand" and anti-development agenda in Indian politics. Some observers trace this trend to approximately 2012, when Prime Minister Manmohan Singh accused US-based NGOs of instigating protests that delayed the commissioning of the controversial Kudankulam nuclear power plant in Tamil Nadu.[12] In 2014, a leaked Intelligence Bureau report accused

[12] In an interview with *Science*, Prime Minister Singh stated, "There are NGOs, often funded from the

foreign-supported NGOs advocating for indigenous people's land rights, against coal and nuclear projects, against genetically modified organisms, and other causes of costing the Indian economy 2-3 percent growth annually.[13]

The immediate source of vulnerability for non-profits is the prospect that the government will revoke their permission to receive foreign funds. In order to accept foreign money, organizations must obtain a license from the Ministry of Home Affairs under the Foreign Contributions Regulation Act (FCRA) and report foreign contributions on a quarterly basis. The FCRA was overhauled in 2010, and the new Act specifics that organizations "likely to affect prejudicially... the security, strategic, scientific or economic interest of the State" are ineligible for licenses. Once issued, licenses are subject to cancellation if the government believes an organization to be "of political nature"(*Foreign Contribution Regulation Act, 2010, 12(4)(f)(ii)*). As noted by a United Nations Special Rapporteur in 2016, the Indian provision lacks "precision" and "appears to give the government broad discretionary powers that could be applied in an arbitrary and capricious manner" (OHCHR 2016). The need to obtain government permission to accept foreign funds creates a vulnerability for Indian civil society, particularly for organizations that scrutinize state activities, represent victims of rights violations, or are not aligned with the priorities of the government. Since 2012, the government has cancelled the FCRA licenses of dozens of organizations that work on rights and advocacy, including international NGOs such as Greenpeace and local organizations such as the Sanchal Foundation, or required them to seek permission prior to accepting foreign funds (Center for Social Impact and Philanthropy 2018, 14-18).

Foreign donors have also been subject to scrutiny and have reduced their funding for activities that might offend the state. For instance, in 2015, the Ford Foundation was placed

United States and the Scandinavian countries, which are not fully appreciative of the development challenges that our country faces... You know, for example, what's happening in Kudankulam. The atomic energy program has got into difficulties because these NGOs, mostly I think based in the United States, don't appreciate the need for our country to increase the energy supply" (Bagla and Stone 2012).

[13] The leaked report is easily available online. For a summary, see Ranjan (2014).

on an Indian government watchlist and threatened with expulsion from the country. Since that time, the Foundation has reportedly advised prospective grantees to avoid terms like "governance," "advocacy," and "human rights" in their funding proposals (Reuters 2015). Interviews with non-profit leaders suggest that foreign donors in general have reduced their emphasis on rights-based development work.

These trends have tightened the supply of foreign funds for rights-based or advocacy work while making NGOs that receive foreign funds more reluctant to undertake advocacy work at all. At the same time, companies have shown little interest in stepping in to fund such work as part of their CSR efforts. Interviews and a review of firm annual reports suggest that companies emphasize projects that deliver easily measurable outcomes in short time-frames and that carry low political and reputational risk. This has led firms to fund a relatively narrow range of work, mostly in service delivery, and to avoid work that is grounded in rights-based approaches or community mobilization. As one scholar of Indian philanthropy put it, firms have a strong preference for "efficiency over justice" (Interview 3).

The rising importance of firms in civil society funding introduces a risk that a civil society dependent upon corporate contributions will necessarily avoid adversarial relations with large firms and the business sector, thereby reducing its ability to represent other interests in society. As Dinah Rajak notes, there is a tendency in global CSR circles to value "consensus" and "win-win solutions." She writes, "those who challenge the orthodoxy of collective goals, risk being labeled as more interested in 'throwing stones' than 'making progress'... The demand for active 'win-win' solutions tends to shut out debate and critique as cynical, ideological, or just a waste of precious time" (Rajak 2011, 57-8).

Firms rely on NGO partners but show little willingness to invest in the NGO sector or civil society as such, for example by providing access to advanced training, investing in research and knowledge production, building networks among organizations, or providing core operational funds. As one CSR analyst at an industry association commented, there is a tendency for companies to treat non-profits as vendors; "we give you this money, and in turn we want certain outputs" (Interview 4). Rather than invest in building new networks or organizations, companies' risk aversion and need to spend their budgets lead them toward a preference for issuing grants to well-established NGOs with an extensive track record of receiving corporate grants. CSR consultants encourage NGOs to serve the particular needs of corporates; at a recent CSR summit in Delhi, a speaker urged NGOs to offer firms opportunities for branding and photo-ops, to design projects in ways that provide "fun-based social impact experiences" for firms' employees, such as playing games with underprivileged children, and to help firms "build consumer connect." NGOs that can show they are advancing their donor's business interests, and not only the interests of their project beneficiaries, will be more competitive in applying for grants.

The role of the state

To what extent should companies be free to shape their own CSR programs, and to what extent should the state direct and monitor that spending? By design, Section 135 gives companies bounded but broad discretion in the choice and design of their projects. Schedule VII of the Companies Act articulates the sectors in which companies may spend Section 135 funds. The MCA has stated that this list is to be "interpreted liberally," seemingly giving companies free rein to spend how they see fit (Ministry of Corporate Affairs, Government of India 2014). However, government bodies and politicians at all levels are making public and private efforts to influence how companies spend their funds. While some of these efforts are clearly inappropriate – such as politicians attempting to drive funds to pet projects or organizations – many of them are undertaken in good faith to help firms identify opportunities for effective spending and to increase the reach of high-priority state social programs.

The most prominent and successful single government appeal for CSR contributions has been the Narendra Modi government's flagship sanitation and cleanliness drive, Swachh

Bharat Abhiyan (Clean India Mission). The mission's logo of a pair of spectacles has become a ubiquitous part of the Indian landscape, appearing on rubbish bins, public toilets, school walls, and billboards across the country. The mission is among the most recognizable government programs in the country, and one closely associated with the prime minister himself. The government promotes Swachh Bharat as being a social movement, not simply as another government program; as such, the government has sought broad public participation, including by the corporate sector.

The government has encouraged companies to implement sanitation projects under the Swachh Bharat brand, and in 2016 reportedly considered requiring companies to spend at least 30 percent of their Section 135 budgets on Swachh Bharat projects (The Hindu BusinessLine 2016). In September 2017, the government of India asked companies to direct seven percent of their CSR budgets toward supporting Swachh Bharat during a two week *jan andolaan* (people's movement) to reinvigorate the three-year-old campaign (Press Information Bureau, Government of India, September 15, 2017). The government has also solicited direct monetary contributions through the Swachh Bharat *Kosh* (fund). In July 2018, the government stated the fund had received $93 million in CSR contributions in the preceding three fiscal years.

Several state governments have also sought CSR contributions to government funds. For example, West Bengal Chief Minister Mamta Banerjee, among other chief ministers, has unsuccessfully petitioned the central government to modify the CSR rules to allow corporates to contribute to state relief funds; most Indian states have a Chief Minister's Relief Fund, a pool of funds that the government can disburse to people affected by natural disasters or otherwise facing financial hardship.

Among India's 28 states, Rajasthan has made perhaps the most organized effort to attract CSR funds and influence their allocation. The government has convened meetings with CSR spenders in the state to discuss their initiatives and to seek support for government programs, hosted an annual CSR summit and awards program, and built a web portal intended to highlight CSR initiatives in the state and provide guidance to companies on areas for spending.[14] The state government sponsors an annual CSR award to recognize "high impact" CSR initiatives. In 2018, the government issued 12 awards in 10 categories, including education, women's empowerment, and health care. At the time of writing, the Government of Rajasthan CSR website listed 143 non-governmental implementing agencies. These include corporate trusts, internationally-affiliated NGOs such as ActionAid, and large Indian NGOs such as the Advit Foundation. The website also listed 18 government departments as implementers.

One rationale the Rajasthan government offers for its role in CSR is that smaller companies have less capacity to design and implement high-impact programs; by coordinating with each other, or by supporting government-identified projects, they may be able to use their funds more effectively. Interviewees from the corporate sector generally agreed with this assessment: for some firms, particularly smaller firms or firms with a less established history of CSR spending, designing and selecting effective programs is a major challenge. Guidance from the state may increase the chances that their projects are effective.

In addition to open, programmatic government appeals, firms report being subject to political pressure in allocation of funds. In interviews, CSR officers of large private-sector companies generally told me that, while they had received inappropriate requests to spend money in politicians' constituencies, they felt free to resist these requests. I received anecdotal but specific reports of political interference in CSR spending among India's large public sector, and indeed public sector enterprises have been criticized for spending CSR money on government priorities such as cow shelters. Perhaps most notoriously, a trust sponsored by the Government of Gujarat solicited donations from the CSR budgets of public sector units to fund the construction of a statue of the independence activist and former home minister Vallabhbhai Patel. At a height of 597 feet, the statue is the world's largest – and, at an

[14]The portal can be accessed at https://csrrajasthangov.in/.

estimated cost of around $425 million, exceptionally expensive. The project was initiated by then-Gujarat Chief Minister Narendra Modi in 2010. Several public-sector enterprises were criticized by the Auditor General of India for contributing a combined $21 million of their CSR budgets toward the statue in 2016-17.

The role of the Indian state in influencing CSR spending will continue to be an area of tension and debate. Skeptics say that government influence over CSR allocations risks diluting the power of the Article 135 mandate. Bhaskar Chatterjee, former head of the Indian Institute of Corporate Affairs and a principal architect of Section 135, has stated, “The purpose of the CSR exercise is that companies spend themselves, and not inflate government kitty” (LiveMint 2018). A CSR officer at a major Indian beverages firm told me that in the past two years they had faced increasing pressure to use CSR funds in support of government programs. “Many government schemes are being sold to corporates, like skill development. Companies are expected to contribute to such schemes, but this is diluting the flexibility for companies to bring their own approach and their corporate experience” (Interview 5). On the other hand, companies are also acutely aware of the limits of their reach, and more ambitious and innovative firms frequently hope to demonstrate new approaches to service delivery and improve the practices of the state. As stated by the MCA, “use of corporate innovations and management skills in the delivery of ‘public goods’ is at the core of CSR implementation by the companies" (Ministry of Corporate Affairs, Government of India 2016). By cooperating with state agencies in the selection and design of CSR projects, companies may increase their ability to transfer their expertise and approaches to the government.

Conclusion

Section 135 has retained remarkably broad political support. Although proposed and passed under the leadership of the Indian National Congress, India’s unique spending mandate has not only survived the under the avowedly pro-business government of Narendra Modi but has been embraced by the administration. A high-level committee on CSR convened by the government was broadly supportive of Section 135, and the changes recommended by the committee – which include clarifying how to account for capital assets such as physical infrastructure created as part of CSR programs, requiring more detailed disclosures by companies, and randomly selecting a percentage of companies for third-party evaluations of program effectiveness – are intended to improve and entrench the current model rather than weaken it. Government bodies at all levels have looked to companies to support their priorities with CSR funds and in 2019 the MCA began to explore actions against companies that have failed to comply (Minister of Corporate Affairs, Government of India 2019). For its part, the corporate sector has mustered little opposition to Section 135. Peak associations such as the Chamber of Indian Industries are focused on assisting their members with compliance, promoting coordination among companies in CSR efforts, and compiling knowledge of best practices and case studies in CSR sectors. Mandatory CSR appears to be a permanent part of the Indian landscape.

Several dynamics will shape the direction of Section 135 in the medium-term. The report of the 2018 High-Level Commission on Corporate Social Responsibility and 2019 amendments to the Companies Act strongly suggest that the state will expand its role in setting spending priorities, shaping project design and location, and enforcing external accountability on companies for compliance and performance. This is through both soft mechanisms such as developing lists of implementing agencies, encouraging companies to cooperate with government agencies in service delivery, and sponsoring awards to recognize companies for innovative or effective programs, as well as through hard mechanisms such as penalties for non-compliance, requiring implementing non-profits be to register with and be approved by the MCA, and conducting audits and evaluations of company projects. To some extent this expanding role and the general tendency of companies to align their projects with government priorities mitigate concerns that corporate service provision will undermine or hollow-out the state. However, the temptation for the government to turn CSR into a mere extension of state programs is strong and risks undermining the capacity of India's non-state development sector – of which corporations are now a major part – to articulate independent approaches to social and developmental challenges.

The ability of companies to design and implement effective, long-term development interventions is also unproven. Quite apart from the question of whether companies have the subject matter expertise needed to do development work, they appear likely to struggle with many of the issues that have undermined the legitimacy and effectiveness of the foreign aid sector for decades. These include: aversion to activities that could expose firms to political risk or potentially negative publicity; a focus on short-term, easily-measurable outcomes and project activities; an avowedly apolitical, technocratic approach to development rather than a focus on root causes and social change; a reluctance to admit when projects fail; and a lack of mechanisms for a project's intended beneficiaries to hold companies and their implementing agencies accountable. A key contextual determinant of whether Indian companies will be able to use Section 135 spending to promote equitable development and address critical social and environmental challenges will be the broader informational and advocacy environment, specifically the capacity of India's civil society and educational institutions to shape corporate and government approaches to CSR and to hold companies accountable for CSR interventions. The constrained funding environment for non-profits engaged in research and advocacy, and increased reliance on corporate donations, calls into question the capacity of civil society to perform this essential democratic function.

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Interview 2: Retired Indian Civil Accounts Service officer. June 20, 2017 (by telephone).
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Interview 4: CSR analyst, industry association. Gurugram, Haryana. September 11, 2018.
Interview 5: CSR officer, beverages firm, Bangalore. September 15, 2017 (by telephone).

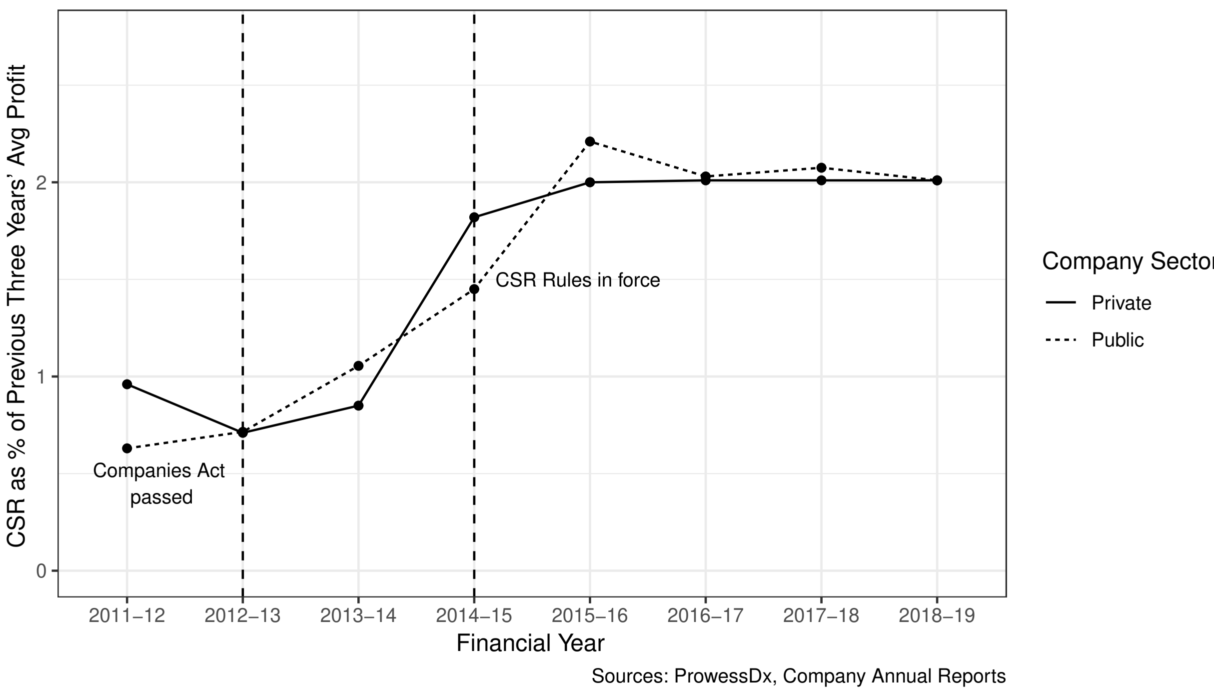
Tables & Figures

Table 1: Approved Categories of Section 135 Expenditure

1. Eradicating hunger, poverty and malnutrition, promoting preventative health care and sanitation, including contribution to the Swach Bharat Kosh set up by the Central Government for the promotion of sanitation, and making available safe drinking water;
2. Promoting education and livelihood enhancement, including special education and employment enhancing vocational skills especially for children, women, elderly, and the differently abled;
3. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
4. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water, including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga;
5. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries, promotion and development of traditional arts and handicrafts;
6. Measures for the benefit of armed forces veterans, war widows, and their dependents;
7. Training to promote rural, nationally-recognized, Olympic, and Paralympic sports;
8. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socioeconomic development and relief and welfare of Scheduled Castes, Scheduled Tribes, other backward classes, minorities, and women;
9. Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
10. Rural development projects.

Adapted from Schedule VII of the Companies Act, 2013, and subsequent amendments.

Figure 1: Median CSR Outlay of Top 100 Spenders, 2011-12 to 2018-19



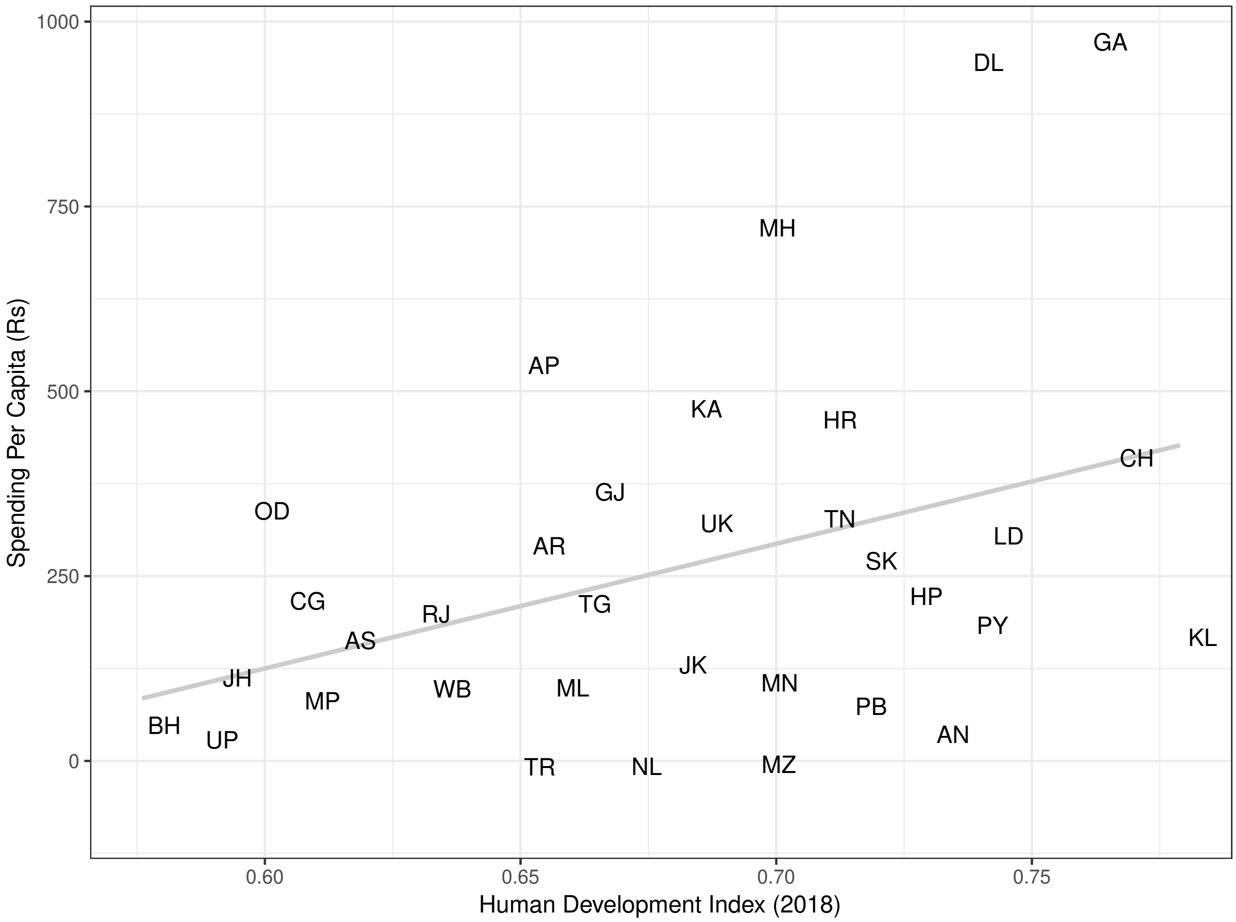
The CSR mandate has sharply increased the CSR outlays of the typical company, in both the private and public sectors. Data from 2014-15 to 2018-19 from ProwessDx. Data from prior years collected by author. The companies included are the top 100 aggregate spenders from 2014-15 to 2017-18. Calculations reflect only companies for which complete spending and profit data are available for a given year. Data is available for a majority of companies in all years except 2011-12, which includes data of 48 firms.

Table 2: Top 25 Spenders Under Section 135, 2014-15 to 2018-19

Rank	**Company**	**Total ($m)**	**Sector**	**Ownership**
1	Reliance Industries	66.1	Diversified	Private
2	Oil & Natural Gas Corporation	45.6	Natural Resources	Government
3	Tata Consultancy Services	30.2	Technology	Private
4	NTPC	28.3	Power	Government
5	Infosys	24.5	Technology	Private
6	ITC	24.1	Diversified	Private
7	HDFC Bank	22.9	Finance	Private
8	Tata Steel	18.7	Natural Resources	Private
9	NMDC	17.0	Natural Resources	Government
10	ICICI Bank	15.9	Finance	Private
11	Wipro	15.6	Technology	Private
12	Axis Bank	12.4	Finance	Private
13	Bharat Petroleum	12.4	Natural Resources	Government
14	State Bank of India	11.3	Finance	Government
15	Power Grid Corporation of India	10.9	Power	Government
16	Indian Oil	10.5	Natural Resources	Government
17	Housing Development Finance Corporation	10.3	Finance	Government
18	Oil India	10.2	Natural Resources	Government
19	Hindustan Zinc	9.5	Natural Resources	Government
20	Hindustan Unilever*	9.1	Consumer Goods	Private
21	Larsen & Toubro	8.9	Diversified	Private
22	Hindustan Petroleum	8.6	Natural Resources	Government
23	REC	8.2	Power	Government
24	Mahanadi Coalfields	8.1	Natural Resources	Government
25	GAIL	7.9	Natural Resources	Government

* denotes subsidiary of foreign multinational corporation

Figure 2: Section 135 Spending and Human Development, 2014-15 to 2017-18, by State



CSR spending is concentrated in states with large corporate presence – which also tend to be states with higher levels of human development. Spending totals include only projects that companies associated with a specific state in their disclosures, or around half of all spending in the database. Actual per-capita outlays are thus substantially higher. HDI data from Smits and Permanyer (2019). CSR data from Ministry of Corporate Affairs (https://www.csr.gov.in/statelist.php). Population estimates from Unique Identification Authority of India (https://uidai.gov.in/images/state-wise-aadhaar-saturation.pdf).