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ORIGINAL PAPER

Are We Moving Beyond Voluntary CSR? Exploring Theoretical and Managerial Implications of Mandatory CSR Resulting from the New Indian Companies Act

Lucia Gatti[1] · Babitha Vishwanath[2] · Peter Seele[3] · Bertil Cottier[4]

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Abstract
Although the literature on corporate social responsibility (CSR) has discussed the scope and meaning of CSR extensively, confusion still exists regarding how to define the concept. One controversial issue deals with the changing legal status of CSR (i.e., the voluntary vs. mandatory nature of the concept). Based on a review of CSR definitions and meta-studies on CSR definitions, we find that the majority of definitions leans toward voluntary CSR. However, some recent regulatory amendments toward mandatory CSR have called into question the established idea of CSR as merely a managerial tool of self-regulation. In this paper, we juxtapose the evolution of CSR in India against the scholarly literature discussing voluntary-versus-mandatory CSR to understand the recent shift toward a new conceptualization of CSR as a form of co-regulation that includes elements of both voluntary and mandatory regulation. The Indian Companies Act 2013 (Section 135) is a remarkable example in that it replaced an older version from 1956, taking a bold step toward the integration of voluntary and mandatory aspects in the application of CSR. We present practical implications of the Indian case for businesses and discuss implications for CSR theory development; we particularly consider the evolution of the business and society relationship from a voluntary soft law approach to CSR to an increasingly hard law approach and transitory hybrid forms in-between like soft–hard law and hard–soft law.

Keywords Corporate social responsibility · Mandatory-versus-voluntary CSR · India · Institutional theories · CSR compliance

✉ Lucia Gatti
lucia.gatti@usi.ch

Babitha Vishwanath
babithavin@yahoo.co.in

Peter Seele
peter.seele@usi.ch

Bertil Cottier
bertil.cottier@usi.ch

[1] Ethics and Communication Law Center, Università della Svizzera italiana, Via Buffi 13, 6904 Lugano, Switzerland

[2] Sarojini Naidu Vanita Maha Vidyalaya, Exhibition Grounds, Nampally, Hyderabad 500001, India

[3] Ethics and Communication Law Center, Università della Svizzera italiana, Via Buffi 13, 6904 Lugano, Switzerland

[4] Faculty of Communication Sciences, Ethics and Communication Law Center, Institute for Public Communication, Università della Svizzera italiana, Via Buffi 13, 6904 Lugano, Switzerland

Introduction

In the last decades, corporate social responsibility (CSR) issues have received an increasing attention, with academics, media, civil society, and, more recently, even politicians and regulators emphasizing the importance of CSR. Economists and management scholars, as well as business ethicists, have debated the meaning of CSR, its implementations, and its performance measurement. However, despite these debates, in both the corporate world and the academic world, confusion remains regarding how to define the concept. One controversial issue in the current discussion deals with the regulation of CSR. Although most definitions argue for the voluntary nature of CSR (for a meta-study, see Dahlsrud 2008) and link CSR to actions not prescribed by law (e.g., "CSR is beyond that which is required by law," Mc Williams and Siegel 2001, p. x), some recent cases of mandatory and legal CSR have called into question the voluntary nature of the concept (Waagstein 2011). A significant

debate over the nature of CSR continues (Waagstein 2011) as governments enact CSR laws and regulations (e.g., Indonesia—2007, Denmark—2008, France—2010, Philippines and Spain—2011, Argentina and Brazil—2012, India and Norway—2013, European Union—2014), thus creating questions as to whether CSR is mandatory or voluntary. One bold step ahead in making CSR legally and a compliance exercise for companies is seen in the Government of India (GOI), which issued a completely revised Companies Act (CA) in 2013 ("Appendix A") to replace the CA from 1956. The CA contains a section exclusively devoted to CSR (Section 135). According to the CA, every company with a net worth of five hundred crore or more (a crore amounts to 10 million INR; see Section 135 (1) for details) must spend 2% on average of its 3-year net profits "in pursuance of its Corporate Social Responsibility Policy" [Section 135 (5)] and must establish a CSR committee of the board consisting of three or more directors to monitor CSR endeavors.

Embedded in specific contexts, structures, and places—and constrained by knowledge and resources (Dicken 2007)—the GOI has opted to regulate CSR in an unprecedented manner. The path chosen is unique and differs substantially from the dominant CSR models of countries such as the UK (Moon 2004), Australia (Deegan and Shelly 2014), and the USA (Matten and Moon 2008).

In this paper, we juxtapose the evolution of CSR in India against the literature discussing voluntary-versus-mandatory CSR (e.g., Dahlsrud 2008; Sheehy 2015; Waagstein 2011). We also discuss the practical consequences of the Indian case for businesses and develop implications for theory development based on the current evolution of Indian CSR from a form of self-regulation toward a hard law approach.

Reviewing Voluntary and Mandatory CSR in the Literature

The Predominance of the Voluntary Approach in the CSR Debate

Despite CSR having been debated for a long time, both the corporate and academic world continue to experience confusion about how to define the concept. According to Van Marrewijk (2003), the problem is the abundance of definitions. This variety in definitions reflects the specific concerns of the different perspectives used to analyze the phenomenon. Indeed, following Sheehy (2015), at least four distinct agendas are engaged in the debate about how to define CSR: businesses, academics (each one with a specific discipline and approach), political parties (characterized by their unique, and often contraposed, philosophy), and government. As a result, the variety of definitions reflects the diversity of political agendas, management concepts, and economic approaches involved in the CSR debate.

In an attempt to provide a synthesis of the status of CSR definitions through a content analysis of existing CSR definitions, Dahlsrud (2008) identifies the main themes addressed by the majority of definitions adopted by CSR scholars and researchers.

The first theme regards the relationship between business and society (e.g., CSR can "contribute to a better society"; Commission of the European Communities 2001). The second theme includes aspects related to preservation of the natural environment (e.g., CSR addresses "environmental concerns in business operations"; Van Marrewijk 2003). The third theme addresses the economic or financial aspects related to business responsibilities (e.g., CSR may "contribute to economic development"; World Business Council for Sustainable Development 2000). The stakeholder theme refers to the definition mentioning one or more stakeholder groups (e.g., CSR deals with "how organizations interact with their employees, suppliers, customers and communities"; Lea 2002). Finally, the last common aspect of the majority of definitions is the voluntary nature of CSR, which links CSR to actions not prescribed by law (e.g., CSR is "beyond that which is required by law"; Mc Williams and Siegel 2001).

In Dahlsrud's (2008) analysis, the voluntary dimension is higher than the environmental score, indicating the extent of emphasis on the nature of CSR being voluntary. Twenty-one of the 37 definitions scanned by Dahlsrud contain the dimension of voluntariness, and not a single definition mentions any mandatory aspects.

Also, Dentchev et al. (2015) note that, in the CSR literature, the principle of voluntarism is predominant and implies that responsible business activities are discretionary and reach beyond the rule of law; conceptually, this principle implies that governments have a minimal role, if any, in the CSR debate.

One of the main contributions to the establishment of the voluntary nature of CSR comes from Carroll's (1979) foundational article, in which the author identifies the voluntaristic responsibility as one of the four dimensions of CSR. According to Mc Williams and Siegel (2001), Carroll's definition of CSR has led to the idea that CSR goes "beyond compliance."

Given the predominance of the voluntary aspect in the academic CSR definitions, it is not surprising that several CSR theories and related approaches assume this aspect as taken for granted. Consider, for example, the instrumental CSR theories that understand CSR as a means to the end of profit (Garriga and Melé 2004). In general, these theories assume that engaging in CSR is mainly a corporate strategy for achieving competitive advantage (Porter and Kramer 2006) in an instrumental way. This implies the idea of CSR

as a corporate investment and, therefore, a management tool not tied to legal requirements.

A second group of theories well established in the CSR debate refers to the so-called political approach to CSR, building on a normative core. These theories derive from Davis's (1967) social power principle stating that "social responsibilities of businessmen arise from the amount of social power that they have" (p. 48). In addition, because of the decreasing efficiency of traditional mechanisms of national and transnational governance in protecting society from corporate externalities, political theories claim a new political role for business firms. According to this approach, CSR is mainly related to self-regulated corporate practices derived from a deliberative and democratic discourse between corporations and civil society (Scherer and Palazzo 2007). This, again, implicitly assumes the "beyond compliance" idea of CSR.

Ethical theories are based on the idea that firms should accept their social responsibilities as an ethical obligation above any other consideration (Garriga and Melé 2004). According to this approach, because it is part of society, businesses must contribute to the common good by creating wealth, providing goods and services in an efficient and fair way, and at the same time respecting the dignity and the inalienable and fundamental rights of the individual. In a certain way, ethical theories assume that CSR is above the law because it is based on the concepts of universal rights and the common good. Therefore, again, the voluntary nature of CSR is implied and also made a cornerstone of CSR ethical theories.

Voluntary-Versus-Mandatory Debate

According to Sheehy (2015), "the voluntary aspect of the definition was motivated in part by the argument that individual firms are better able to find ways to implement CSR and reduce their social costs more effectively when tailored by management to the specific industry or firm in which it is being applied" (p. 640). Therefore, one justification for the predominance of the voluntary nature of CSR can be linked to its potential effects in terms of corporate costs and social benefits.

Another reason used to support voluntary CSR is related to the discussion about the decline of the government's power in the regulation of corporate conduct to avert adverse externalities for society and the environment. According to the advocates of political CSR, for example, with the advent of globalization, corporate activities have crossed the "territory-bond validity of state regulation and bureaucracy" (Scherer et al. 2006, p. 512), making necessary self-organizing processes to solve the deficit in regulation and therefore manage corporate externalities.

However, the voluntary approach is also widely criticized in the literature for promoting free-riding behavior (O'Neill 2007; UNEP 1998), for the impossibility of sanctioning transgressors (Cominetti and Seele 2016), and for the problems related to the level of transparency and credibility of voluntary CSR reports (Lock and Seele 2016).

In relation to the mandatory approach, the literature reports a number of positive consequences associated with the government intervention. In particular, mandatory CSR raises awareness and may give CSR a proper policy priority (Cominetti and Seele 2016). Moreover, Horrigan (2007) claims that moving from a voluntary to a mandatory system may facilitate the establishment of regulated (and comparable) CSR indicators that finally benefit the whole nation.

However, mandatory CSR has also received several critiques from business scholars. In such systems, businesses apply CSR only because they are obliged by law, therefore reducing the managerial involvement in the definition and design of CSR programs. Indeed, some studies have found that this form of CSR favors a reactive approach to CSR and not a proactive approach (Matten and Moon 2008). According to some authors, this, in turn, reduces the corporate engagement in CSR in terms of creativity and investment, leading to less effective CSR programs (Reid and Toffel 2009). In addition, Wang et al. (2016) argue that mandatory systems may favor an allocation of CSR resources to personal projects with limited social value or, worse still, "become a cover for graft and corruption by funding local political projects or organizations" (Wang et al. 2016, p. 540).

Reviewing the Blurred Line Between Voluntary and Mandatory CSR

The contradiction in evidence and positions that characterized the CSR voluntary-versus-mandatory debate has resulted in new CSR definitions and approaches including both voluntary and mandatory aspects.

The evolution of the European Union discussion of CSR is an example. In 2001, the European Commission developed its well-known Green Paper on CSR (2001), which describes where it described CSR as a "concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis." The 2001 definition, which has become one of the most frequently cited in the CSR literature (Dahlsrud 2008), explicitly stresses the fact that being socially responsible means going beyond what is required by law to satisfy societal and stakeholders' needs (Cominetti and Seele 2016). For almost a decade, the European Commission has therefore highlighted and supported the voluntary nature of CSR, promoting a strategic approach to CSR issues. However, in 2011 the Commission has started

to consider a new conceptualization of CSR including also mandatory aspects. Indeed, in its Renewed EU Strategy for Corporate Social Responsibility, developed by the European Commission in 2011, the Commission not only recognizes the need "to acknowledge the role that complementary regulation plays in creating an environment more conducive to enterprises voluntarily meeting their social responsibility" (European Commission 2011, p. 5), but it also underlines the role of public authorities in supporting CSR "through a smart mix of voluntary policy measures and, where necessary, complementary regulation" (European Commission 2011, p. 7). Therefore, although the Commission continues to consider CSR as primarily a voluntary corporate engagement, it also recognizes the important role of political authorities in encouraging and checking such engagement (Aßlander et al. 2016), for example, by reserving the right to legal intervention if corporate activities in the field of CSR prove to be insufficient.

Integrative CSR theories, and in particular institutional theories deriving from the institutional and neo-institutional framework, have further developed and conceptualized the interdependency with the context in the formation of different forms of CSR. According to these theories, "the content of business responsibility is limited to the space and time of each situation depending on the values of society at that moment" (Garriga and Melé 2004, pp. 57–58). Therefore, these theories do not assume a totally voluntary approach to CSR. Indeed, they recognize the influence of the specific social system (characterized by specific values, norms, and regulations) in shaping CSR. Institutional theorists have therefore discussed the combination of mandatory and voluntary aspects in the formation of CSR and the dynamic nature of its implementation to explain the variety of CSR cases and examples that cannot be understood by a CSR definition assuming a totally voluntary or mandatory approach (e.g., Waagstein 2011).

A New Conceptualization: CSR as a Form of Regulation

The debate has resulted in new CSR definitions and conceptualizations, such as the one proposed by Sheehy (2015), who defines CSR as "a socio-political movement which generates private self-regulatory initiatives, incorporating public and private international law norms seeking to ameliorate and mitigate the social harms of and to promote public good by industrial organisations" (p. 639).

Sheehy's definition does not negate precedent definitions and approaches. Contrary, it contributes to the debate by connecting them to the larger institutional context. Indeed, CSR is a multilevel phenomenon that can be investigated at different levels of analysis: individual, organizational, and institutional (Aguinis and Glavas 2012; Wood 1991). While most of the literature and the majority of CSR definitions are focused on the organizational and individual level, the institutional framework may provide new insights into the CSR debate by placing CSR within the field of economic governance. As Brammer claims, "rather than seeing CSR purely as a realm of voluntary action, institutional theory suggests seeking to place CSR explicitly within a wider field of economic governance characterized by different modes including the market, state regulation and beyond" (Brammer et al. 2012, p. 7).

This shift of perspective introduces several implications for the voluntary-versus-mandatory debate and allows a new understanding of the phenomenon capable of overcoming existing contradictions. Following Sheehy (2015), CSR can be understood as a form of law or regulation, and not just as a managerial tool or an effort to regulate companies' societal harms.

Considering CSR as a form of regulation does not neglect the voluntary dimension. Indeed, "regulation" does not merely imply a collection of mandatory rules imposed by public authorities. On the contrary, it includes self-regulation, private regulation, and publicly imposed regulation. Differently, from private regulation, self-regulation may be either public or private. Private self-regulation is commonly established in forms of codes of conduct or standards. Public self-regulation occurs for example when governments sponsor it through a collaboration with the private sector (Sheehy 2012). As a matter of fact, at the moment, CSR primarily consists of private business self-regulation, although in cases, such as India, discussed in the next chapters, a shift toward public regulation can be observed.

In this regard, Cominetti and Seele (2016) developed a categorization of the different CSR—regulation forms. According to the authors, the various CSR guidelines are currently characterized by different levels of enforceability. While some are considered hard law, others are completely voluntary. Hard law initiatives imply a legal obligation. In contrast, soft law standards are non-binding; they are a form of self-regulation and consist of voluntary initiatives embraced or even supported by the companies themselves.

However, in between soft and hard are different stages of regulation implying different levels of obligations and sanctions. For instance, the category of soft law has voluntary guidelines characterized by a low level of formalization resulting in weak or no sanctions in cases of non-compliance. An example of a CSR standard belonging to this category is the United Nations (UN) Global Compact. Indeed, companies can voluntarily embrace the UN Global Compact's universal principles (addressing anti-corruption, human rights, labor, and the environment) without being forced to apply them. Members are required to communicate

their progress every year, and in case of non-compliance with this basic rule, they can be excluded from the initiative.

Cominetti and Seele (2016) identify three other types of regulation characterizing CSR initiatives: the hard–soft law, the soft–hard law, and the hard law. The *hard–soft law* category contains those voluntary CSR initiatives (soft law) characterized by a high level of formalization and certification (therefore it is hard in its approach, like SA 8000) and weak sanctions in case of non-compliance. The Global Reporting Initiative (GRI) is an example. Although the standard provides formalized and precise rules and procedures for reporting on CSR issues, it is not mandatory, and companies may simply use the guidelines informally.

Those mandatory standards (hard law) characterized by a low level of formalization and weak sanctions belong to the soft–hard law category. The EU directive on mandatory reporting (2014/95/EU), for example, requires companies with more than 500 employees listed on EU markets, or operating in the banking and insurance industries, to disclose in their management report (with the first reports to be published in 2018, on the financial year 2017) information on their policies, main risks, and outcomes related to environmental and social matters. Although this directive is a legal requirement, there is no sanction for non-compliance and CSR reports will be audited but not verified.

Finally, *hard–hard law* comprises mandatory laws with a high level of formalization and strong sanctions for non-compliance. The Sarbanes–Oxley Act issued in 2002 by the US government to regulate corporate governance and financial practices is an example.

In line with Sheehy's (2015) argument regarding the current predominance of CSR as private business self-regulation, Cominetti and Seele (2016) report that currently about 88.2% of CSR standards consist of soft law initiatives, with about 67.6% belonging to the soft law category and 20.6% to the hard–soft group. Among the 11.7% of mandatory guidelines, most correspond to hard law (8.8%). Although this segmentation may be useful to understand the current state of regulation of CSR initiatives, given its dependence on the surrounding institutional environment and its dynamic nature, the level of formalization of CSR is subject to continuous change. In this sense, the line between voluntary and mandatory CSR may actually be seen as blurred. Indeed, some cases of voluntary guidelines have a strong linkage with the law. For example, the ISO 26000 (belonging to the soft category) demands compliance with international norms of behavior and human rights (Leipziger 2010). Likewise, ISO 14001 explicitly requires respect for all applicable environmental laws and regulations.

The new conceptualization of CSR as a form of regulation is a necessary step in light of new CSR regulation systems developed by some countries and promotion of a CSR approach characterized by a blurred line between voluntary and mandatory initiatives. In particular, the development of CSR in India represents one of the stronger examples that contradict the traditional CSR definition exclusively focused on the voluntary nature of CSR and supports the recent integration of the mandatory and voluntary dimensions in the CSR academic debate.

CSR in India

The Indian Context

Although in the first decade of the 2000s India's growth rate reached 7.5% and the average income was expected to double in a decade, developmental challenges such as poverty, malnutrition, and poor infrastructure still persist in the country. In this regard, the World Bank Report (2009) states that the "below poverty line" ratio in India is still significant, with 26% of people living in urban areas and 28% in rural regions surviving below the poverty line. Maternal mortality (per 100,000 live births) in 2009 was 450, the infant mortality rate (per 1000 live births) was 57, the percentage of underweight children (younger than 5 years) was 46%, the male adult literacy rate (15 years and older) was 73%, and the female adult literacy rate (15 years and older) was 48%.

The GOI has developed several programs (e.g., National Rural Health Mission 2012, SarvaShiksha Abhiyan14 (SSA) focused on the issue of elementary education) to address these problems; however, as Ghosh and Chakraborti (2010) state, the GOI investments, although considerable, cannot alone eradicate developmental challenges. According to the literature (e.g., Das Gupta and Das Gupta 2008; Ghosh and Chakraborti 2010; Mohan 2001), given the gravity of environmental and social problems in India and the impossibility of the GOI resolving the situation alone, business CSR policies in India are currently considered developmental tools. Indeed, following Das Gupta and Das Gupta, "the last decade of the twentieth century witnessed a swing away from charity and traditional philanthropy towards a more direct engagement of business in mainstream development and concern for disadvantaged groups in society" (Das Gupta and Das Gupta 2008, p. 210). This explains why, in the last decades, Indian CSR has moved from a philanthropic form of business donations and contributions to a more structured practice addressing the urgent developmental challenges of the country (Balasubramanian et al. 2005). Figure 1 summarizes the acts, regulations, and guidelines in India chronologically:

Mohan (2001) suggests that this shift in the content of CSR activities has been driven both internally by corporations and externally by the government. In this sense, the Indian Companies Act 2013 supporting a mandatory CSR can be considered a sign of the growing collaboration

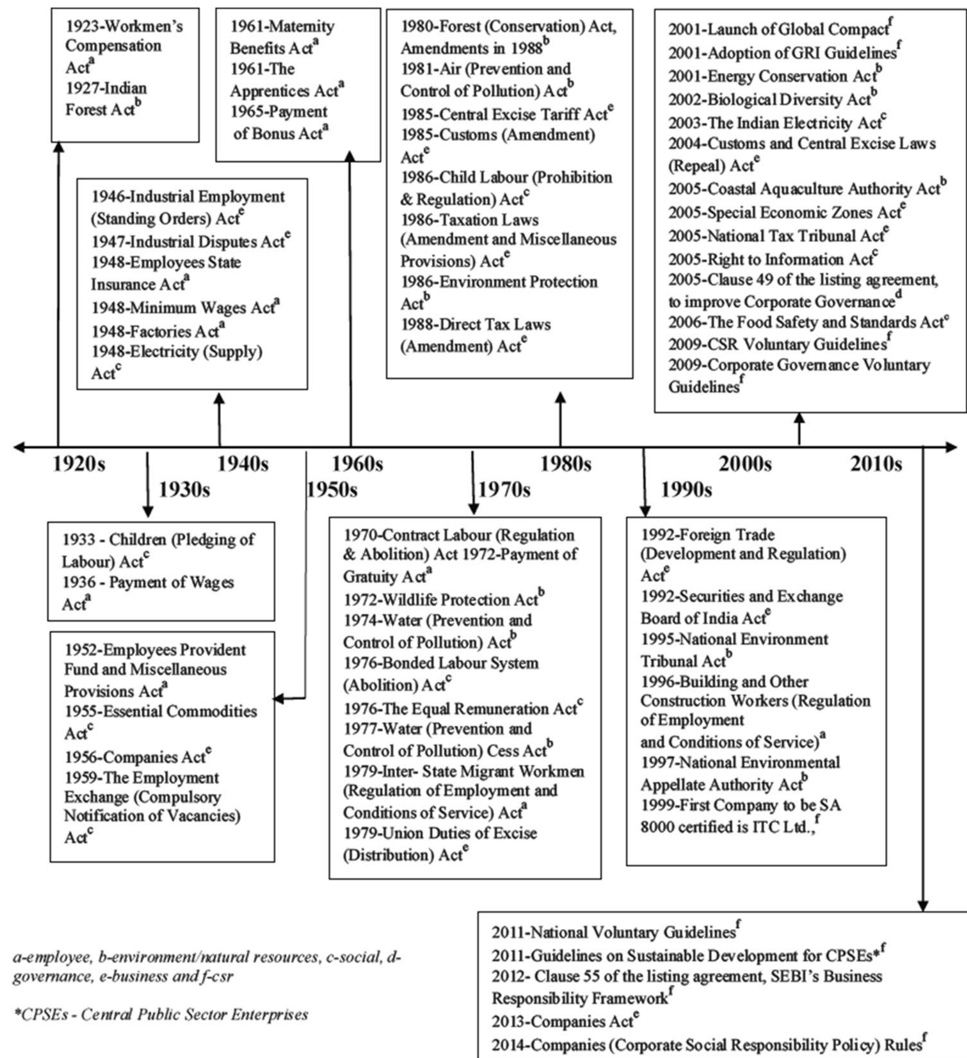

Fig. 1 Acts, regulations, and certifications toward CSR in India

between the GOI and businesses for the sake of the country's development.

The Development of the GOI Policy Concerning CSR

Since India's independence, the GOI has addressed environmental and social issues related to business operations and developed a regulation framework for business companies. However, prior to 2009, the regulatory body for CSR mainly consisted of a series of guidelines and suggestions for companies, which adopted CSR policies on a voluntary basis.

From 2009 to 2013, the GOI played an active role in encouraging corporations to assume voluntarily greater responsibility for the social and environmental issues plaguing the nation. Throughout this period, a series of guidelines encouraged business to undertake CSR activities and publish CSR and sustainability reports. Guidelines included, for example, the CSR Voluntary Guidelines—2009, the Guidelines on CSR and Sustainability for Central Public Sector Enterprises in 2010, revised in 2011 and 2013, and the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business—2011. In 2012, the Securities Exchange Board of India (SEBI) issued a circular—Clause 55 of the listing agreement—according to which major public and private sector corporations (top 100 companies in terms of market capitalization) have to report according to the Business Responsibility Reporting Framework—2012. In this context, with the GOI seeking support and collaboration from the business sector to boost social, economic, and environmental development in India, a special Section (135) on CSR was introduced in the CA 2013.

CA 2013: A Legal Perspective

In 2013, the Indian Parliament passed CA 2013 to replace the outdated CA of 1956 with revamped legislation that takes the corporate realities of a fast-growing liberal economy into

account. Divided into 470 sections, the new CA defines the legal framework that applies to business companies operating in India. In particular, it regulates the incorporation and dissolution of commercial firms, as well as their internal organization and their liability.

Addressing the issue of CSR directly, Section 135 (reproduced in "Appendix A") is considered as a major innovation introduced by the new CA. For the first time, not only in India but also in the whole world, firms are legally required to spend a percentage of their profits on CSR activities. In addition, they are compelled to establish an internal organ (CSR Committee) dedicated to defining the company's CSR program (CSR Policy) and supervise its implementation. The *ratio legis* of this unique provision, which went into effect April 1, 2014, is to fight growing income inequality in a liberalized economy and to ensure a better distribution of wealth in the communities in which firms operate. The Ministry of Corporate Affairs had previously issued recommendations promoting socially responsible behavior (CSR Voluntary Guidelines 2009), with no (or at least very limited) success. Thus, legislators decided to opt for a mandatory approach to CSR activities (Dharmapala and Khanna 2016), which is consistent with the recent understanding of CSR as a form of law or regulation, and not just as a managerial tool or an effort to regulate companies' societal harms.

Section 135 is supplemented by two additional sets of provisions: first Schedule VII, an appendix to the CA which lists desirable CSR activities, and second, the Corporate Social Responsibility Policy Rules 2014 (CSR Rules). Adopted subsequently by the Minister of Corporate Affairs on the basis of the regulatory powers conferred on it by Section 469 par. 1 and 2 CA, the CSR Rules delineate the categories of companies subject to Section 135, the modalities of implementation of the CSR activities, and the composition of the CSR committee. Hence, the CSR Rules clarify the rather vague concepts, duties, and processes specified by Section 135. Nonetheless, some gray zones persist; for instance, the tax treatment of CSR activities is still unclear as both Section 135 and the CSR Rules are silent on this fundamental issue.

Companies Subject to Mandatory CSR

As comprehensive as the new CA may seem, not all firms are obliged to develop CSR activities. In fact, par. 1 of Section 135 limits this obligation to large business companies, that is, companies that meet one (or more) of the following three financial criteria: a turnover of more than Indian rupees 1000 crore, a net worth higher than INR 500 crore, or a net profit exceeding INR 5 crore (a crore amounts to 10 million INR). An estimated 16,000 firms fall within the ambit of Section 135. Even if this number seems low, it is still more than the 5000 companies assumed to fall under the mandatory CSR reporting legislation in the European Union.

According to the "A New Conceptualization: CSR as a Form of Regulation" section CSR Rules, foreign companies operating in India are obliged to develop CSR activities if they have established a branch in the country (precise criteria are provided in "Reviewing Voluntary and Mandatory CSR in the Literature" section par. 2 CA).

The Mandatory CSR Activities

Section 135 obliges companies to engage in CSR activities. The activities from which to choose are listed in Schedule VII, including, among others, eradication of extreme hunger and poverty, progress in education, promotion of gender equality and empowerment of women, reduction of child mortality, improvement of environmental sustainability, and enhancement of vocational skills. Whether this list is exhaustive or just illustrative (and thus would allow companies to carry out CSR programs not expressly listed) remains disputed (Dharmapala and Khanna 2016). With a mind to preventing corruption and nepotism, "CSR in India" section of the CSR Rules states that projects benefiting only the employees of a company (or their families), or that support the company's business objectives or favor a political party, do not qualify as CSR activity. With a view to boosting the social development of India, the legislature strongly recommends that companies assign priority to projects that have a local impact (Section 135 par 5); in any event, the activities have to take place in India.

Companies may choose to conduct their CSR programs through third-party organizations, such as trusts, societies, and charitable companies operating in India provided the organization is not set up by the company. To undertake their CSR activities, companies may also collaborate or pool resources with other companies, as long as they report separately on those CSR activities ("CSR in India" section CSR Rules).

The innovative approach of the Indian legislature lies not so much in obliging companies to launch CSR activities as in prescribing a minimum threshold for expenditures in such activities. According to "CA 2013: A Legal Perspective" section par. 5, a company is obliged to spend on socially responsible projects or programs at least 2% of the average net profit (pretax) made during the three immediately preceding financial years. However, Section 135 is deemed a so-called lex imperfecta,[1] as the CA does not prescribe any penalties for a company that fails to spend the required amount on CSR expenditures. The only consequence of a violation

[1] The expression "lex imperfecta" stems from Roman law and designates a norm deprived of any sanctions in case of violation.

of Section 135 par. 5 is an obligation to specify, in the board's annual report, the reasons for not having respected the threshold of CSR expenditures. This comply-or-explain duty is the result of a compromise between the GOI, which insisted on embarking on a fully mandatory CSR course, and Indian pro-business lobbies, which showed hostility toward any legal obligations in that respect (Dharmapala and Khanna 2016). Therefore, Section 135 (as the mandatory CSR reporting legislation from the European Union) belongs to the soft–hard law category of CSR standards developed by Cominetti and Seele (2016) and previously discussed. Indeed, it implies a hard law characterized by a low level of formalization and weak sanctions.

The different CSR activities a company develops must be listed in a specific document called the CSR Policy; this document also specifies the modalities of their execution and the implementation schedules. It is up to the company's board to adopt the CSR Policy and to supervise its implementation.

The Indian Parliament and the Ministry of Corporate Affairs have been keen to ensure maximum transparency in CSR activities. Hence, the CSR Policy, which details both the activities to be developed and the amount of money to be spent, must be disclosed on the company's Web site. In addition, the board's annual report must dedicate a specific chapter to a survey of the CSR activities conducted during the financial year; in particular, the expenditures in that respect should be detailed. To facilitate comparison, this information is to be presented following the specific format prescribed by the annex to the CSR Rules. Overall, the new CA with its groundbreaking Section 135 making CSR mandatory for Indian companies has severe consequences for our understanding of CSR in business ethics research, as we outline in the concluding chapter. Nevertheless, it must be said that India is not the only country where this transition from voluntary to mandatory CSR—also on the hard law level—is advanced. Therefore, our theories, concepts, and definitions of CSR should be revisited in the future to address this transition.

Conclusion

Theoretical Implications: Toward "CSR Compliance"

In contrast to the main traditional perspectives, reviewed above, advocating the voluntary nature of CSR, our analysis of the evolution of CSR in India supports recently developed conceptualizations incorporating mandatory and voluntary aspects (e.g., Sheehy 2015; Waagstein 2011). In particular, our study is in line with new institutional theories that discuss the combination of mandatory and voluntary aspects in the formation of CSR and the dynamic nature of its implementation to better explain the variety of CSR cases that cannot be understood by a CSR definition assuming a totally voluntary approach. Following Waagstein, CSR "evolves and shifts over time depending on changes in the degree of risk, regulation, reputational challenge, and standards of desirable behavior, which redefine the boundaries of what is acceptable, feasible, and profitable" (Waagstein 2011, p. 457).

The new approach to CSR proposed by institutional theorists and supported by the case study discussed in this paper constitutes a unique step in the evolution of the CSR concept: The new conceptualization of CSR as a form of regulation may, therefore, be considered a revolutionary advancement in the conceptual debate about the nature and implications of CSR. After several decades characterized by the establishment of the voluntariness paradigm of CSR and, afterward, the debate over voluntary-versus-mandatory CSR, the diffusion of different forms of CSR initiatives combining voluntary and mandatory aspects has led to a recognition of a new function of governments and external institutions in the regulation and promotion of CSR. The CA 2013 discussed in this paper and the new EU directive on mandatory CSR reporting (2014/95/EU) are therefore examples showing how the context surrounding CSR issues is changing toward a new paradigm. This new paradigm—or chapter—involves the transition from the conceptualization of CSR as an internal management initiative toward a new and broader understanding of CSR as a particular type of business and society relationship that is already mandatory as soft law (Sheehy 2015) but not transformed into legally mandatory action.

This transition has implications for our conceptual understanding of CSR as most of the existing definitions and theories as reviewed above are challenged. This transition asks for theory development in the direction of CSR compliance. Indeed, as a form of regulation, CSR should identify motivating mechanisms to promote compliance. As Sheehy suggests (2012) for example, private self-regulatory systems as codes of conduct and standards cannot rely on fear of public punishments. Different mechanisms belonging to the sphere of personal motivation and morality should be further investigated to understand compliance to ethical values. This may be considered a contradiction in terms because, as a philosophical concept, responsibility builds on the idea of communicating, negotiating, and accepting responsibility (in contrast to liabilities). However, as this is a transitory phase, the paradoxical notion of "CSR compliance" may point to the contradictions and logical inconsistencies inherent in this transformation process. The following concepts may be considered and followed up: corporate social liability, CSR compliance, and enforced CSR.

Incorporating longitudinal research on the labeling of corporations' environmental and societal activities, one may also propose to replace CSR compliance with corporate

sustainability compliance, as sustainability is replacing the term CSR in non-financial reports (Gatti and Seele 2014).

With the transition toward mandatory CSR, the academic community is experiencing a shift in the competencies of scholars addressing CSR. While for years CSR was mainly addressed in management and marketing, it is now also increasingly discussed in the field of law.

At a practical level, new figures are entering the scene, and the discussion is no longer merely a managerial debate centered on the corporate benefits and costs associated with CSR. In the Indian case presented in the previous chapters, for example, both the Indian Parliament and the Ministry of Corporate Affairs now not only discuss CSR issues but also regulate and monitor corporate commitment.

Another avenue of theoretical implications is seen in the pace of the transition. Our example of the CA 2013 takes a bold step toward the new idea of CSR as a form of regulation. In addition, it is a sign of how the relationship between business and society is evolving along the lines of soft law and hard law. Although today CSR is mainly applied as a form of private self-regulation or soft law (Sheehy 2015), the GOI involvement in the regulation of corporate CSR seems to confirm Selznick's (1969) prediction that public investments in the field of CSR will transform CSR into public law and therefore into hard law.

Practical Implications

It is too early to gauge the outcomes of the legislation as companies are reporting for only the second time in their annual reports for 2015–2016. During the first year of compliance, 2014–2015, the Ministry of Corporate Affairs (2016) communicated that the companies' CSR expenditure was rupees 6337.36 crores. Of these companies, only 11% was public sector undertakings (PSUs), while the rest belong to the private sector, an indication that regulation steers the private sector's involvement in developmental efforts. The proportion of the amount spent by PSUs was approximately 38%, while the top 20 companies spent nearly 56%, indicating that large companies contribute more. One thousand seven hundred and ninety projects were undertaken during the year across the country; one-third was based in the five states of Maharashtra, Gujarat, Tamil Nadu, Karnataka, and Rajasthan. Except for Rajasthan, the greater the economic activity in a state, the more numerous the CSR projects. The top three sectors (according to the Indian Ministry of Corporate Affairs), which attracted 64% of CSR funds, included education/vocational skills/livelihood enhancement; eradicating hunger and poverty; healthcare; and environment and sustainability.

Likely as a consequence of the comply-or-explain approach prescribed in the CA, a study conducted by the Confederation of Indian Industry (CII 2016) reported that nearly 500 companies did not fulfill the norm of spending 2% of average net profit. Nevertheless, 94% of the companies now have a CSR Policy in place, and 97% have a CSR Committee.

Based on these preliminary results, it seems that mandatory CSR in India may effectively generate an opportunity to boost the country's development and address some of the huge social and environmental issues it faces. However, to make a significant contribution to the society, business leaders should move from a philanthropic approach to a more structured and strategic perspective resulting from a dialog with other stakeholders such as non-governmental organizations (NGOs) and civil society in general (Stanford Social Innovation Review, Summer 2014). In this regard, Balasubramanian et al. (2005) claim that the evolution from a philanthropic form of business donations to a more structured CSR has already begun in India and companies are ready to address the urgent developmental challenges the country faces.

Based on the Indian case and the many other jurisdictions that make CSR a legally mandatory compliance exercise, companies should prepare to professionalize their CSR beyond mere impression management, corporate communication, or marketing exercise. Non-financial activities, particularly from the environmental and societal realm, are increasingly required to be addressed as a legal responsibility. This affects not only the standardization of CSR reporting as proposed by GRI, but also more transparent and controllable management of CSR issues across companies' value and supply chain.

Limitations and Outlook

The presented study points at a transition from voluntary to mandatory CSR, taking a closer look at the new CA making CSR a legal exercise. Although other jurisdictions making CSR or elements of CSR such as CSR reporting mandatory are reviewed, the Indian case is a peculiar case in that it does not allow for generalizability on a global scale. This is true because India with its colonial heritage and large population, as well as its cultural heritage such as the caste system, should not be mixed with other countries and their ideas of CSR. Second, the way Section 135 conceptualizes CSR is not in line with other contexts discussed as CSR; particularly, the extra "tax" imposed on CSR is a model, which is not used in other jurisdictions.

Due to the limitations of the Indian case, the value of this study lies less in CSR practices and more as a spotlight on the transformation occurring in many other countries as well: the constitution of CSR as legally binding within national jurisdiction. This, in turn, has consequences—and that is the main contribution of this article—for our overall

understanding of CSR and the necessity of abandoning our old ideas and definitions of CSR as a strictly voluntary exercise in favor of CSR as a legal necessity within and across different jurisdictions.

Therefore, future research is necessary to understand more thoroughly this transnational trend and what it means for transnational companies as well as local small- and medium-sized companies. A second avenue for future research is in investigating the motivation for CSR. If CSR becomes a legal exercise, then the motivation to go beyond the required minimum level is altered. Third, mandatory CSR has implications for the established relations with stakeholders: Once CSR is legally required, the motivation to engage in dialog with external stakeholders is not as important as the legal requirement regarding topics, taxes, and criteria. For CSR in general the possible weakening of stakeholder dialog, however, reduces the social cohesion of working toward the public good together as part of the (voluntary) social responsibilities of a company.

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Compliance with Ethical Standards

Conflict of interest All authors declare that they have no conflict of interest.

Ethical Approval This article does not contain studies with human participants or animals performed by any of the authors.

Appendix A: Section 135 of Companies Act 2013—Corporate Social Responsibility

1. Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
2. The Board's report under subsection (3) of Section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
3. The Corporate Social Responsibility Committee shall—

    (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
    (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
    (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

4. The Board of every company referred to in subsection (1) shall—

    (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's Web site, if any, in such manner as may be prescribed; and
    (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

5. The Board of every company referred to in subsection (1) shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (*o*) of subsection (3) of Section 134, specify the reasons for not spending the amount.

Explanation For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of Section 198.

Appendix B: Schedule VII of Companies Act 2013

Activities Which May be Included by Companies in Their Corporate Social Responsibility Policies

Activities relating to—

1. Eradicating extreme hunger and poverty;
2. Promotion of education;
3. Promoting gender equality and empowering women;
4. Reducing child mortality and improving maternal health;

5. Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria, and other diseases;
6. Ensuring environmental sustainability;
7. Employment-enhancing vocational skills;
8. Social business projects;
9. Contribution to the Prime Minister's National Relief Fund or any other fund setup by the Central Government or the State Governments for socioeconomic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities, and women; and
10. such other matters as may be prescribed.

References

Aßländer, M. S., Gössling, T., & Seele, P. (2016). Editorial: Business Ethics in a European Perspective: A Case for Unity in Diversity? *Journal of Business Ethics, 139*(4), 633–637.

Aguinis, H., & Glavas, A. (2012). What we know and don't know about corporate social responsibility. *Journal of Management, 38*(4), 932–968.

Balasubramanian, N. K., Kimber, D., & Siemensma, F. (2005). Emerging opportunities or traditions reinforced? *Journal of Corporate Citizenship, 17,* 79–92.

Brammer, S., Jackson, G., & Matten, D. (2012). Corporate social responsibility and institutional theory: New perspectives on private governance. *Socio-Economic Review, 10*(1), 3–28.

Carroll, A. B. (1979). A three-dimensional model of corporate social performance. *Academy of Management Review, 4,* 497–505.

Cominetti, M., & Seele, P. (2016). Hard soft law or soft hard law? A content analysis of CSR guidelines typologized along hybrid legal status. *UWF, 24*(1–2), 127–140.

Commission of the European Communities. (2001). Promoting a European framework for corporate social responsibilities. COM (2001), Bruxelles, Belgium.

Confederation of Indian Industry (CII). (2016). A billion dollars story of CSR spends in FY15: Results of CESD's annual CSR tracker. Retrieved September 2016, from http://www.sustainabledevelopment.in/uploads/pdf/1450611319CSR%202015%201st%20draft.pdf.

Dahlsrud, A. (2008). How corporate social responsibility is defined: An analysis of 37 definitions. *Corporate Social Responsibility and Environmental Management, 15,* 1–13.

Das Gupta, A., & Das Gupta, A. (2008). Corporate social responsibility in India: Towards a sane society? *Social Responsibility Journal, 4*(1/2), 209–216.

Davis, K. (1967). Understanding the social responsibility puzzle. *Business Horizons, 10*(4), 45–51.

Deegan, C., & Shelly, M. (2014). Corporate social responsibilities: Alternative perspectives about the need to legislate. *Journal of Business Ethics, 121,* 499–526.

Dentchev, N. A., Balen, M. V., & Haezenck, E. (2015). On voluntarism and the role of governments in CSR: Towards a contingency approach. *Business Ethics: A European Review, 24*(4), 378–397.

Dharmapala, D., & Khanna, V. (2016). The impact of mandated corporate social responsibility: Evidence from India's companies act of 2013. Coase-Sandor Institute for Law and Economics, Chicago Law School, Working Paper 783.

Dicken, P. (2007). *Global shift—Mapping the changing contours of the world economy* (5th ed.). New York: The Guilford Press.

European Commission. (2011). A renewed EU strategy 2011–14 for corporate responsibility [COM(2011) 681]: Commission of the European Communities, Brussels. Retrieved March 22, 2015, from http://ec.europa.eu/enterprise/policies/sustainablebusiness/files/csr/new-csr/act_en.pdf.

Garriga, E., & Melé, D. (2004). Corporate social responsibility theories: Mapping the territory. *Journal of Business Ethics, 53,* 51–71.

Gatti, L., & Seele, P. (2014). Evidence for the prevalence of the sustainability concept in European corporate responsibility reporting. *Sustainability Science, 9,* 89–102. https://doi.org/10.1007/s11625-013-0233-5.

Ghosh, A., & Chakraborti, C. (2010). Corporate social responsibility: A developmental tool for India. *The IUP Journal of Corporate Governance, 9*(4), 40–56.

Horrigan, B. (2007). 21st century corporate social responsibility trends—An emerging comparative body of law and regulation on corporate responsibility, governance, and sustainability. In *Corporate social responsibility in the 21st century. Debates, models and practices across government law and business* (Vol. 4, pp. 85–122). Cheltham: Edward Elgar Publishing.

Lea, R. (2002). Corporate social responsibility, institute of directors (IoD) member opinion survey. Retrieved 23 June, 2003, from http://www.epolitix.com/data/companies/images/Companies/Institute-of-Directors/CSR_Report.pdf.

Leipziger, D. (2010). *The corporate responsibility code book, revised* (2nd ed.). Shipley: Greenleaf Publishing.

Lock, I., & Seele, P. (2016). The credibility of CSR (corporate social responsibility) reports in Europe. Evidence from a quantitative content analysis in 11 countries. *Journal of Cleaner Production*. https://doi.org/10.1016/j.jclepro.2016.02.060.

Matten, D., & Moon, J. (2008). "Implicit" and "explicit" CSR: A conceptual framework for a comparative understanding of corporate social responsibility. *Academy of Management Review, 33*(2), 404–424.

Mc Williams, A., & Siegel, D. (2001). Corporate social responsibility: A theory of the firm perspective. *The Academy of Management Review, 26*(1), 117–127.

Ministry of Corporate Affairs official website. (2016). Retrieved 14 September, 2016, from http://www.mca.gov.in/Ministry/pdf/lok_unstarred_ques_656_26022016.pdf.

Mohan, A. (2001). Corporate citizenship: Perspectives from India. *Journal of Corporate Citizenship, 2,* 107–117.

Moon, J. (2004). Government as a driver of corporate social responsibility. International Centre for Corporate Social Responsibility, University of Nottingham, UK.

O' Neill, B. (2007). Solving the "problem" of free riding. From mises institute, Austrian economics freedom and peace webpage. Retrieved February 12, 2016, from https://mises.org/library/solving-problem-free-riding.

Porter, M., & Kramer, M. (2006). Strategy and society: The link between competitive advantage and corporate social responsibility. *Harvard Business Review, 84,* 78–92.

Reid, E. M., & Toffel, M. W. (2009). Responding to public and private politics: Corporate disclosure of climate change strategies. *Strategic Management Journal, 30*(11), 1157–1178.

Scherer, G. A., & Palazzo, G. (2007). Toward a political conception of corporate responsibility: Business and society seen from a habermasian perspective. *Academy of Management Review, 32*(4), 1096–1120.

Scherer, G. A., Palazzo, G., & Baumann, D. (2006). Global rules and private actors—Towards a new role of the transnational corporation in global governance. *Business Ethics Quarterly, 16*(4), 505–532.

Selznick, P. (1969). *Law, society and industrial justice*. New York: Russell Sage Foundation.

Sheehy, B. (2012). Understanding CSR: An empirical study of private regulation. *Monash University Law Review, 38*(2), 103–127.

Sheehy, B. (2015). Defining CSR: Problems and solutions. *Journal of Business Ethics, 131,* 625–648.

Stanford Social Innovation Review. (2014). A mandate for responsibility. Stanford Social Innovation Review, pp. 11–12.

United Nations Environment Programme Industry and Environment. (1998). *Voluntary industry codes of conduct for the environment. Technical report No. 40* (p. 8). Herndon: United Nations Publication.

Van Marrewijk, M. (2003). Concepts and definitions of CSR and corporate sustainability: Between agency and communion. *Journal of Business Ethics, 44,* 95–105.

Waagstein, P. R. (2011). The mandatory corporate social responsibility in Indonesia: Problems and implications. *Journal of Business Ethics, 98,* 455–466.

Wang, H., Tong, L., Takeuchi, R., & George, G. (2016). Corporate social responsibility: An overview and new research directions. *Academy of Management Journal, 59*(2), 534–544.

Wood, D. J. (1991). Corporate social performance revisited. *Academy of Management Review, 16,* 691–718.

World Bank Report. (2009). NFHS 3 2005-06, and World Bank's "India at a Glance".

World Business Council for Sustainable Development. (2000). *Corporate social responsibility: Making good business sense*. Geneva, CH: World Business Council for Sustainable Development.