REACHING AN AIM DIFFERENTLY? CORPORATE SOCIAL RESPONSIBILITY REGULATION IN AUSTRALIA AND INDIA

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ABSTRACT

Businesses incorporate corporate social responsibility principles mainly through voluntary and mandatory approaches. Advocates of the voluntary approach believe that companies can use charitable initiatives as a management tool to meet social and environmental expectations and that mandating Corporate Social Responsibility ("CSR") would not encourage companies to prioritize anything beyond profits. Opponents argue that without legal requirements to drive social responsibility, relying on companies to self-regulate would not effectively integrate social values into corporate behaviors. Instead, they suggest that legal regulation of CSR can offer a more effective strategy. This Article examines the limitations of these two approaches by analyzing Australia, which represents the model of voluntary CSR, and India, which serves as an example of mandatory CSR. Evaluating these two approaches in CSR regulation framework, this Article argues that CSR should not be defined exclusively by the differences between voluntary and mandatory approaches in CSR regulation, nor should the separation between the two be absolute.

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I. INTRODUCTION

Corporate Social Responsibility ("CSR") refers to how a company conducts its business in alignment with the legal, ethical, and social standards of the environment in which it operates.[1] Typically viewed as a voluntary or charitable initiative, CSR is a management tool for self-regulation to meet social and environmental expectations.[2] However, corporate bodies' responses to these expectations have not been adequate and they are frequently blamed for misusing their CSR ability for social development and self-centered strategies.[3]

1 Timothy M. Devinney, Joachim Schwalbach & Cynthia A. Williams, *Corporate Social Responsibility and Corporate Governance: Comparative Perspectives*, 21 CORP. GOVERNANCE: AN INT'L REV. 413, 413 (2013); *see* Geoffrey B. Sprinkle & Laureen A. Maines, *The Benefits and Costs of Corporate Social Responsibility*, 53 BUS. HORIZONS 445, 445-46 (2010).

2 *See* Virginia Harper Ho, *Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and the Law in China*, 46 VAND. J. TRANSNAT'L L. 375, 377-78 (2013); *see also* Lucia Gatti, Babitha Vishwanath, Peter Seele & Bertil Cottier, *Are We Moving Beyond Voluntary CSR? Exploring Theoretical and Managerial Implications of Mandatory CSR Resulting from the New Indian Companies Act*, 160 J. BUS. ETHICS 961 (2019).

3 *See* Dwight R. Lee, *Socially Responsible Corporations: The Seen and the Unseen*, ECONLIB (Feb. 4, 2023), https://www.econlib.org/library/Columns/y2013/Leecorporations.html [https://perma.cc/TM39-BLAH]; Anup Shah, *Corporations and the Environment*, GLOB. ISSUES, https://www.globalissues.org/article/55/corporations-and-the-environment [https://perma.cc/9PN8-HA2R] (May 25, 2002); Maria Shao, *Social Pressures Affect Corporate Strategy and Performance*, STAN. BUS. GRADUATE SCH. (Dec. 1, 2009), https://www.gsb.stanford.edu/insights/social-pressures-affect-corporate-strategy-performance [https://perma.cc/5DXU-LAP4]; ANN FLORINI, THE COMING DEMOCRACY: NEW RULES FOR RUNNING A NEW WORLD 117 (2013). As stated by Philip H. Knight, the former Chair and Chief Executive of Nike, "It has been said that Nike has single-handedly lowered the human rights standards for the sole purpose of maximizing profits [and] the Nike product has become synonymous with slave wages, forced overtime, and arbitrary abuse." E. J. Dionne Jr., Opinion,

Moreover, though businesses have addressed the side effects of corporate operations and, in many instances, go beyond the controlling ability of the state organization, corporate society's contribution to mitigating adverse effects is meager. Furthermore, the outcomes and effectiveness of most companies' CSR initiatives have been unclear and inconsistent, due to a lack of corporate transparency and direction, as well as may countries' regulatory emphasis on voluntarism.[4] This is partly because companies tend to choose responsibilities that serve their interests rather than address community needs, raising concerns about whether legal regulations could help address these issues.[5]

Two dominant schools of thought for incorporating CSR principles in corporate self-regulation strategies emerged from this background. Some reformers argue that mandating CSR would not encourage companies to move beyond their focus on profits.[6] They seem to support the idea that CSR should be viewed as a voluntary or

Bad for Business, WASH. POST (May 14, 1998, 8:00 PM), https://www.washingtonpost.com/archive/opinions/1998/05/15/bad-for-business/112d99ce-a98c-479a-8b4e-9c371c786f36/ [https://perma.cc/MWC9-KC9N].

4 Jo Confino, *Oxfam Report Shows Multinational Companies Failing on CSR goals*, THE GUARDIAN (Feb. 26, 2013), https://www.theguardian.com/sustainable-business/oxfam-multinational-companies-failing-csr [https://perma.cc/UCV7-RZZP]. For the Oxfam International reports on the social and environmental policies of global companies and their implementation, visit *Behind the Brands: Food Justice and the 'Big 10' Food and Beverage Companies*, OXFAM INT'L (Feb. 26, 2013), https://www.oxfam.org/en/research/behind-brands [https://perma.cc/9PRA-VFUN]; *see also* Adriana Paliwoda-Matiolańska, *Towards CSR as a Regulatory Framework and Governance Tool in Disclosure of Corporate Social and Environmental Impact: The Example of Poland*, 11 INT'L J. ECON. & MGMT. 327 (2017); Enrique Dans, *Volkswagen and the Failure of Corporate Social Responsibility*, FORBES (Sept. 27, 2015), https://www.forbes.com/sites/enriquedans/2015/09/27/volkswagen-and-the-failure-of-corporate-social-responsibility/ [https://perma.cc/25LV-C7D4].

5 *See* Karin Buhmann, *Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR*, 6 CORP. GOVERNANCE 188 (2006).

6 Habib Zaman Khan, Sudipta Bose & Raechel Johns, *Regulatory Influences on CSR practices Within Banks in an Emerging Economy: Do Banks Merely Comply?*, CRITICAL PERSPS. ACCT., July 29, 2019, at 1 (arguing that "mandatory corporate reporting would [not] enhance social and environmental accountability in Bangladesh" without "real political accountability, a philanthropic mentality and values among banks' powerful stakeholders"); Benedict Sheehy, Habib Zaman Khan, Paramita Prananingtyas & Philein Sophiana Sunarso Putri, *Shifting from Soft to Hard Law: Motivating Compliance When Enacting Mandatory Corporate Social Responsibility*, 24 EUR. BUS. ORG. L. REV. 693, 694 (2023).

charitable initiative that can be used as a self-regulating management tool to meet social and environmental expectations.[7] Others argue that relying solely on voluntary CSR initiatives overlooks the importance of regulatory power and business-government collaborations.[8] They find that CSR activities can be difficult to differentiate from basic regulatory compliance,[9] and that multinational corporations' CSR efforts range from mandatory compliance to voluntary depending on the

7 Andromachi Athanasopoulou, Emilio Marti, David Risi & Eva Schlindwein, *How Companies Restrain Means–Ends Decoupling: A Comparative Case Study of CSR Implementation*, J. MGMT. STUD., Jan. 24, 2024, at 1; Buthiena Kharabsheh, Hussam Al-Shammari & Khaled Bataineh, *Research on Corporate Social Responsibility: Insights and Future Directions*, 13 ADMIN. SCIS., Jan. 30, 2023, at 1. Colin Crouch termed CSR as "corporate externality recognition" or "behaviour by firms that voluntarily takes account of the externalities produced by their market behaviour, externalities being defined as results of market transactions that are not themselves embodied in such transactions." Colin Crouch, *Modelling the Firm in Its Market and Organizational Environment: Methodologies for Studying Corporate Social Responsibility*, 27 ORG. STUD. 1533, 1534 (2006); *see also* Jeremy Moon & David Vogel, *Corporate Social Responsibility,Government, and Civil Society*, *in* THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY 303 (Andrew Crane, Dirk Matten, Abagail McWilliams, Jeremy Moon & Donald S. Siegel eds., 2008); Archie B. Carroll & Kareem M. Shabana, *The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice*, 12 INT'L J. MGMT. REVS. 85 (2010). Supporting voluntarism in CSR implementation, the European Commission opines that "certain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibility." *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011-14 for Corporate Social Responsibility*, at 3 COM (2011) 681 final (Oct. 25, 2011).

8 John M. Conley & Cynthia A. Williams, *Engage, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement*, 31 J. CORP. L. 1, 35 (2005); *see also* JOOP KOPPENJAN & ERIK-HANS KLIJN, MANAGING UNCERTAINTIES IN NETWORKS: A NETWORK APPROACH TO PROBLEM SOLVING AND DECISION MAKING (2004).

9 *See* William S. Laufer, *Social Accountability and Corporate Greenwashing*, 43 J. BUS. ETHICS 253 (2003); Andreas Georg Scherer and Guido Palazzo find that CSR communications can be filled with technical data, but not necessarily reflect voluntary efforts to comply with environmental compliances. *See* Andreas Georg Scherer & Guido Palazzo, *Toward a Political Conception of Corporate Responsibility: Business and Society Seen from a Habermasian Perspective*, 32 ACAD. MGMT. REV. 1096, 1114 (2007).

country.[10] Additionally, they posit that voluntary CSR initiatives may not necessarily result in value creation.[11] Without legal requirements to drive social responsibility, sole reliance on companies' self-regulation would not effectively integrate social values into corporate behaviors.[12] Amid such conflicting positions, the level of national integration and application of CSR principles varies significantly, partially due to differences in institutional efficiencies between individual nation-states.[13] Using Australia and India as case studies, this Article explicates this variance in CSR regulation.

The CSR regulatory systems in Australia rely mainly on voluntary methods for incorporating CSR principles in companies.[14] Although voluntary approaches give companies more flexibility to adapt to changing economic conditions, they can also lead to corporate governance systems that only prioritize shareholders.[15] Such an emphasis on voluntary frameworks may result in weak relationships with social institutions and a lack of social responsibility.[16] This is because when companies prioritize the interests of their shareholders over their core obligations, their perception of social responsibility becomes

10 *See* Ronen Shamir, *Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility*, 38 LAW & SOC'Y REV. 635, 648 (2004); Duane Windsor, *Corporate Social Responsibility: Three Key Approaches*, 43 J. MGMT. STUD. 93 (2006).

11 *See* Bryan W. Husted & David B. Allen, *Strategic Corporate Social Responsibility and Value Creation Among Large Firms: Lessons from the Spanish Experience*, 40 LONG RANGE PLAN 594 (2007); Bryan W. Husted & David B. Allen, *Strategic Corporate Social Responsibility and Value Creation: A Study of Multinational Enterprises in Mexico*, 49 MGMT. INT'L REV. 781, 794 (2009); *see also* Michael E. Porter & Claas van der Linde, *Green and Competitive: Ending the Stalemate*, HARV. BUS. REV., Sept.-Oct. 1995, at 120; Pursey Heugens & Nikolay Dentchev, *Taming Trojan Horses: Identifying and Mitigating Corporate Social Responsibility Risks*, 75 J. BUS. ETHICS 151 (2007).

12 MIA MAHMUDUR RAHIM, LEGAL REGULATION OF CORPORATE SOCIAL RESPONSIBILITY: A META-REGULATION APPROACH OF LAW FOR RAISING CSR IN A WEAK ECONOMY 5 (2013); *see also* Andreas Georg Scherer & Guido Palazzo, *The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and Its Implications for the Firm, Governance, and Democracy*, 48 J. MGMT. STUD. 899, 900 (2011).

13 *See* George Halkos & Antonis Skouloudis, *National CSR and Institutional Conditions: An Exploratory Study*, 139 J. CLEANER PROD. 1150 (2016).

14 *See* Kunnawee Thirarungrueang, *Rethinking CSR in Australia: Time for Binding Regulation?*, 55 INT'L J. L. & MGMT. 173, 174 (2013).

15 RAHIM, *supra* note 12, at 79; *see also* Devinney et al., *supra* note 1, at 413.

16 *See* Devinney et al., *supra* note 1, at 413.

unclear.[17] This can be seen in major Australian companies' negative corporate social responsibility practices. For instance, James Hardie Industries, Australia's largest manufacturer of asbestos-containing products, produced asbestos products with the knowledge of asbestos's link to lung cancer.[18] The company neither acknowledged this health danger nor took any precautions; instead, it openly engaged in practices severely damaging the health of its employees and others.[19] As another example, BHP Ltd (the owner of 52% controlling interest of the Ok Tedi Mining Ltd in Fiji) used an aggressive extraction method that damaged the livelihoods and environment surrounding the Ok Tedi river.[20] In so doing, it was responsible for discharging vast amounts of chemicals (including copper) and at least 80,000 tons of tailings into this river daily.[21] Further, Australian Wheat Board gave $221.7 million to the Iraqi government from 1997 to 2003, which was boycotted by most of the international community for its inhumane treatment of its citizens, committing unethical acts only to accomplish its business goals.[22] Despite their attempts at CSR initiatives, these companies ultimately failed to be socially responsible.[23]

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17 *See* Mallika Tamvada, *Corporate Social Responsibility and Accountability: A New Theoretical Foundation for Regulating CSR*, INT'L J. CORP. SOC. RESP., 2020, at 1, 3.

18 Ben Hills, *The James Hardie Story: Asbestos Victims' Claims Evaded by Manufacturer*, 11 INT'L J. OCCUPATIONAL & ENV'T HEALTH 212-14 (2005). William Cooke warned about the danger of using asbestos in 1924. W. E. Cooke, *Fibrosis of the Lung Due to the Inhalation of Asbestos Dust*, BRITISH MED. J. 147, 147 (1924); *see also* P. W. J. Bartrip, *History of Asbestos Related Disease*, 80 POST GRADUATE MED. J. 70 (2004).

19 Hills, *supra* note 18, at 212.

20 Stuart Kirsch, *Anthropology and Advocacy: A Case Study of the Campaign Against the Ok Tedi Mine*, 22 CRITIQUE ANTHROPOLOGY 175, 190 (2002).

21 Gavin M Mudd, Charles Roche, Stephen A. Northey, Simon M. Jowitt & Gama Gamato, *Mining in Papua New Guinea: A Complex Story of Trends, Impacts and Governance*, 741 SC. TOTAL ENV'T, Nov. 1, 2020, at 7-8.

22 Elizabeth R. Dunlop & Ian A. Coghlan, *The Ethics of Relativism and Absolutism: An Examination of the Australian Wheat Board Case* 22 (Queensland Univ. of Tech., Paper, 2006).

23 For an idea about BHP's environmental responsibility, see *Be Environmentally Responsible*, BHP, https://www.bhp.com/about/operating-ethically/our-code/care-for-our-people-and-planet/be-environmentally-responsible [https://perma.cc/RBN6-N5GY] (last visited May 16, 2024); James Hardie mentions five values, including "do the right thing," on its corporate website. *Our People*, JAMESHARDIE, https://www.jameshardie.com.au/our-people [https://perma.cc/BTK9-KF3L] (last visited May 16, 2024).

Such failure can be seen as the by-product of the disclosure requirement that lies at the core of Australia's voluntary approach to CSR regulation. While the emphasis on CSR reporting in Australia is increasing, its voluntary strategy begs the question of the degree to which a stakeholder can rely on the information contained in the CSR reports of companies like BHP, Australian Wheat Board, and James Hardy. While companies increasingly release CSR reports, the fact that most are published according to a voluntary reporting system raises doubts about the quality of the information disclosed. In fact, reporting of CSR performance in itself does not provide much benefit unless the information is accurate, concrete, and easily comparable to reports disclosed by other corporations. Moreover, CSR reports are often used as public relations tools, rather than a form of corporate accountability to stakeholders.[24] Corporate staff inherently seek to display a good image of the company to their stakeholders in order to increase market share. As such, if companies may voluntarily decide what to report, they tend to disclose only the positive aspects of certain activities while omitting the negative. As a result, CSR reports do not necessarily reflect a company's real performance, bringing into question the report's value. A CSR report's disclosure of both positive and negative performance does not make it automatically adequate, however. The format, clarity, and presentation of the document also play an important role. Most CSR reports of Australian companies from a given industry refer to the same information, follow a common structure, and comprehensively establish the estimated social benefit and social cost of their various activities. These kinds of issues have led academics, NGO officials, corporate representatives, and social activists to ascertain whether or not the voluntary approach to CSR regulation is the best one.[25]

Where the voluntary approach fails to produce results, the control of corporate activities naturally shift towards increased government and legislative intervention.[26] India exemplifies this approach, as it

24 Matthew Haigh & Marc T. Jones, *The Drivers of Corporate Social Responsibility: A Critical Review*, BUS. REV., Jan. 2006, at 2.

25 *See generally* Helen Anderson & Wayne Gumley, *Corporate Social Responsibility: Legislative Options for Protecting and the Environment*, 29 ADELAIDE L. REV. 29 (2008); Thirarungrueang, *supra* note 14; Halkos & Skouloudis, *supra* note 13.

26 *See generally* Haigh & Jones, *supra* note 24; *see also* Virginia Harper Ho, *Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and the Law in China,* 46 VAND. J. TRANSNAT'L L. 375, 400 (2013).

recently adopted a mandatory approach to CSR regulation. Section 135 of India's Companies Act 2013 has resulted in stricter regulations and a greater emphasis on corporate stakeholders,[27] by requiring certain companies to engage in CSR spending and disclosure.[28] As a result, CSR in India has evolved from a philanthropic or voluntary approach to a more objective-oriented regulatory format that aims to generate economic value while addressing societal challenges.[29] There are doubts, however, that the "growing intervention of state authorities in the field of CSR supports rather than corrects the rise of private governance, which involves profit-driven companies in the performance of political functions."[30] Moreover, it is claimed that India's legal regulation framework for CSR is somewhat vague and lacks oversight and enforceability.[31] Section 135 explicitly outlines how much of a company's profits are to be spent on CSR actions.[32] But it does not define corporate social responsibility.[33] Without a comprehensive definition of CSR, companies can incorrectly designate some projects as "CSR" and bypass the legislative provisions.[34]

In 2020, the top 300 companies in India made about two-thirds of the country's yearly average CSR spending, or nearly ₹10,000 crore.[35] While it seems that the legislation has increased efficient management of corporate social responsibility, its impact remains superficial and a

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27 *See* Asha K.S. Nair & Som Sekhar Bhattacharyya, *Mandatory Corporate Social Responsibility in India and Its Effect on Corporate Financial Performance: Perspectives from Institutional Theory and Resource-Based View*, 2 BUS. STRATEGY & DEV. 106, 108 (2019).

28 Akanksha Jumde & Jean Du Plessis, *Legislated Corporate Social Responsibility (CSR) in India: The Law and Practicalities of Its Compliance*, 43 STATUTE L. REV. 170, 171 (2022).

29 Nayan Mitra, *Impact of Strategic Management, Corporate Social Responsibility on Firm Performance in the Post Mandate Period: Evidence from India*, 6 INT'L J. CORP. SOC. RESP., no. 3, 2021, at 2; Gatti et al., *supra* note 2, at 961.

30 Damien Krichewsky, *CSR Public Policies in India's Democracy: Ambiguities in the Political Regulation of Corporate Conduct*, 19 BUS. & POL. 510, 542 (2017).

31 *See* Jumde & Du Plessis, *supra* note 28, at 194.

32 Dhammika Dharmapala & Vikramaditya Khanna, *The Impact of Mandated Corporate Social Responsibility: Evidence from India's Companies Act of 2013*, 56 INT'L REV. L. & ECON. 92, 93 (2018).

33 Mitra, *supra* note 29, at 3.

34 *See id.* at 4.

35 Srishti & Tavleen Singh, *Why This Is Not CSR: A Study of 5 Major Corporates*, DOWNTOEARTH (Dec. 10, 2020), https://www.downtoearth.org.in/blog/governance/why-this-is-not-csr-a-study-of-5-major-corporates-74587 [https://perma.cc/R5C6-RFLL].

mere band-aid, as it failed to incorporate the ideas of "righteousness" at the cognitive level of business companies. Many CSR programs do not seek to meet a social policy goal, but rather to meet the legal requirement and their need to legitimize their business operations.[36] While some corporate programs initially aid societal needs, such as increasing female education, sanitation awareness, and family planning, many are not contributing to social and environmental causes at all.[37] Many funds are not only unjust, however, but also contradict social values and environmental needs.[38] Their lack of commitment to solving social causes through CSR programs can mean that the problems caused by the programs outweigh their benefits.

Given these backgrounds, it is worth evaluating the voluntary and mandatory approaches to CSR regulation. To undertake this evaluation, this Article focuses on the core strategies of these approaches in Australian and Indian contexts. The second Part of this Article defines CSR and its fundamental principles. The third Part describes the voluntary and mandatory approaches to incorporating CSR principles at the core of companies' decision-making. The fourth and fifth Parts critically assess the credentials of CSR regulation frameworks implemented in Australia and India respectively. The final Part notes the similarities of the obstacles in successful CSR implementation in Australia and India, observing in particular the challenges presented by profit-driven corporate purpose.

II. CORPORATE SOCIAL RESPONSIBILITY AND ITS PRINCIPLES

CSR is an adaptable concept.[39] There is no definitive definition of CSR and, as an ever-evolving, diverse term, it can have varied

36 In 2016, only 27% of the companies who reported on CSR consulted intermediaries while preparing their CSR related policies; 16% of these companies included NGOs in their CSR policy framing exercise. *See* PRIYA NAIK, ANUSHREE PAREKH, SIMONIL RUSTOMJI, MIKHAIL FIDEL D'SOUZA & AHONA GHOSH, TRANSFORMING INDIA: THE CSR OPPORTUNITY 28 (2016), https://www.rockefellerfoundation.org/wp-content/uploads/Tranforming-India-The-CSR-Opportunity-August-2016.pdf [https://perma.cc/7KTP-YVTR].

37 Jumde & Du Plessis, *supra* note 28, at 183-84.

38 *See id.* at 185.

39 Michael Hopkins, *Corporate Social Responsibility: An Issues Paper* 21, (Pol'y Integration Dep't World Comm'n on the Soc. Dimension of Globalization Int'l Labour Off. Geneva, Working Paper No. 27, 2004); Marcel Van Marrewijk, *Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion*, 44 J. BUS. ETHICS 95, 103 (2002).

meanings to different people and organizations. Yet, notions of CSR are often consistent and converge on several common qualities and components. Examining CSR from a practical and operational perspective converges on two specific aspects. It demands businesses to (a) evaluate the social, environmental, and economic implications of their activities and (b) respond to the requirements and expectations of their stakeholders.[40] These two points are also implicit in the meaning of CSR's three terms—i.e., "corporate," "social," and "responsibility." The term "corporate" often refers to business operations; "social" encompasses all business operations' stakeholders; and "responsibility" typically refers to the relationship between business corporations and the society in which they operate. Accordingly, CSR is an integral component of business strategy; it is the path that a company should take to deliver its products or services to the market, a means of maintaining the legitimacy of corporate actions in the broader society by bringing stakeholder concerns to the fore, and a means of emphasizing business concern for social needs and activities that go beyond philanthropy.

John Elkington's "triple bottom line" is one of the best-known frameworks for understanding CSR principles.[41] Under this paradigm, CSR emphasizes a company's social, economic, and environmental responsibilities, which are required to guarantee economic growth, environmental quality, and social fairness.[42] Archie Carroll highlights four tasks a firm must assume to become socially responsible. According to Carroll, a socially responsible organisation "encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time."[43] In current CSR practice literature, stakeholder engagement in CSR performance is another compelling consideration. Edward Freeman and John McVea, for example, contend that businesses are obligated to involve their stakeholders in corporate activity. According to them, stakeholder

40 Christopher Tung, *The Legal Implications of CSR: Changing Landscape of Liability* (2006), MALLESONS STEPHEN JAQUES (Sept. 25, 2006), https://www.yumpu.com/en/document/read/47664693/the-legal-implications-of-csr-changing-landscape-of-csr-asia [https://perma.cc/72QX-M6RQ].

41 *See* JOHN ELKINGTON, CANNIBALS WITH FORKS: THE TRIPLE BOTTOM LINE FOR 21ST CENTURY BUSINESS (1997).

42 *Id.* at 37. For a discussion on the implementation of these precepts in companies, see Grahame F. Thompson, *Global Corporate Citizenship: What Does It Mean?*, 9 COMPETITION & CHANGE 131 (2005).

43 Archie B. Carroll, *A Three-Dimensional Conceptual Model of Corporate Performance*, 4 ACAD. MGMT. REV. 497, 500 (1979).

engagement is essential for companies to manage their external environment effectively.[44] These key sources of CSR practice can be categorized into four major groups: the societal, environmental, economic, and stakeholder principles.[45]

Each approach has a distinct perspective regarding CSR definitions and responsibility boundaries.[46] Nonetheless, each is grounded in fundamental concepts. The societal principle of CSR posits that businesses should contribute to improving societies. As a result, they should incorporate social issues into their fundamental strategy and evaluate the full breadth of their societal impact. Specifically, the societal concept mandates that businesses implement fair pay standards; defend human rights, fair trade, and ethical issues; provide safe products; and collaborate with other companies and communities.[47] The economic principle emphasises production efficiency without compromising social or environmental objectives.[48] It posits that, in addition to responding to the financial expectations of their shareholders, corporations should prioritize the economic well-being of society as a whole.[49] The environmental principle asserts that firms should not hurt the environment to maximize their profits and should play a significant role in correcting environmental damage caused by their reckless

44 *See generally* Edward R. Freeman & John McVea, *A Stakeholder Approach to Strategic Management*, *in* THE BLACKWELL HANDBOOK OF STRATEGIC MANAGEMENT 183 (Michael A. Hitt, Edward Freeman & Jeffrey S. Harrison eds., 2001).

45 Tim Stobierski, *What Is Corporate Social Responsibility? 4 Types*, HARV. BUS. SCH. ONLINE (Apr. 8, 2021), https://online.hbs.edu/blog/post/types-of-corporate-social-responsibility [https://perma.cc/KYM2-77U5].

46 Van Marrewijk, *supra* note 39, at 95.

47 *See* A. Konrad R. Steurer, M. E. Langer & André Martinuzzi, *Empirical Findings on Business–Society Relations in Europe*, 63 J. BUS. ETHICS 89, 91 (2006); Archie B. Carroll, *Corporate Social Responsibility: Evolution of a Definitional Construct*, 38 BUS. & SOC'Y 268 (1999); Elisabet Garriga & Domènec Melé, *Corporate Social Responsibility Theories: Mapping the Territory*, 53 J. BUS. ETHICS 51 (2004); Van Marrewijk, *supra* note 39; Carmen Valor, *Corporate Social Responsibility and Corporate Citizenship: Towards Corporate Accountability*, 110 BUS. & SOC'Y REV. 191 (2005).

48 *See* ELKINGTON, *supra* note 41, at 74; Maureen Rogers & Roberta Ryan, *The Triple Bottom Line for Sustainable Community Development*, 6 LOC. ENV'T 279, 282-83 (2001); Elisa Juholin, *For Business or the Good of All? A Finnish Approach to Corporate Social Responsibility*, 4 CORP. GOVERNANCE 20, 29 (2004).

49 Konrad et al., *supra* note 47, at 93.

exploitation of natural resources.[50] Finally, the stakeholder principle of CSR requires businesses to consider the legitimate interests of their non-shareholder stakeholders.[51] These principles are the primary determinants of the origins of many CSR practices and, as such, are crucial criteria for determining CSR practice strategies.[52] CSR practice at the state level differs significantly, however, despite the fact that states aspire to achieve the same goals by realizing the same principles outlined above. In the next Part, this Article discusses the dominant CSR regulation practices.

III. INCORPORATING SOCIAL RESPONSIBILITY PRINCIPLES IN CORPORATIONS

The incorporation of CSR principles in corporations is a dominant topic in corporate regulation. In strong economies, institutional investors, regulators, NGOs, and civil society groups have generally responded to this debate by collaborating with the private sector to make self-regulation more enforceable and effective.[53] In these economies, pension funds, consumer coalitions, non-profit organizations, and other groups have developed monitoring schemes that incorporate aspects of corporate governance into their CSR guidelines, ratings, and best practices.[54] In weaker economies, the CSR ethos has not been

50 *See generally* Rodney McAdam & Denis Leonard, *Corporate Social Responsibility in a Total Quality Management Context: Opportunities for Sustainable Growth*, 3 CORP. GOVERNANCE 36 (2003); Dirk Matten & Jeremy Moon, *Pan-European Approach. A Conceptual Framework for Understanding CSR*, *in* CORPORATE ETHICS AND CORPORATE GOVERNANCE 179 (Walther Ch. Zimmerli, Klaus Richter & Markus Holzinger eds., 2007).

51 R. Edward Freeman & S. Ramakrishna Velamuri, *A New Approach to CSR: Company Stakeholder Responsibility*, *in* CORPORATE SOCIAL RESPONSIBILITY: RECONCILING ASPIRATION WITH APPLICATION 9, 16-20 (Andres Kakabadse & Mette Morsing eds., 2006); Dima Jamali, *A Stakeholder Approach to Corporate Social Responsibility: A Fresh Perspective into Theory and Practice*, 82 J. BUS. ETHICS 213, 217-19 (2008).

52 Duane Windsor, *The Future of Corporate Social Responsibility*, 9 INT'L J. ORGANIZATIONAL ANALYSIS 225, 231-32 (2001); Jamali, *supra* note 51, at 215.

53 *See generally* Ronen Shamir, *The De-Radicalization of Corporate Social Responsibility*, 30 CRITICAL SOCIO. 669 (2004); Ronen Shamir, *Mind the Gap: The Commodification of Corporate Social Responsibility*, 28 SYMBOLIC INTERACTION 229 (2005).

54 *See* Andreas G. F. Hoepner & Lisa Schopohl, *State Pension Funds and Corporate Social Responsibility: Do Beneficiaries' Political Values Influence Funds' Investment Decisions?*, 165 J. BUS. ETHICS 489 (2020). The California Public

suitably incorporated into corporate policies.[55] In economies that heavily rely on labor-intensive industries, a lack of social coalitions that monitor CSR performance is common. NGOs and media outlets in these economies rarely hold companies accountable, and their regulatory strategies may not have the essential features to ensure that companies prioritize the interests of their stakeholders in the long run.[56] In such cases, corporate self-regulation in these economies may not adhere to the core principles of CSR.[57]

The incorporation of CSR principles in different economies is divided into two core regulation systems: (a) voluntary and (b) mandatory. This Section discusses how pro-regulation and pro-business arguments have shaped these regulatory approaches.

A. Ideological Basis of the Voluntary Approach in CSR Regulation

Voluntarism is a practice that allows companies to distribute resources in a way that benefits both society and themselves.[58] It is believed that there is a positive correlation between voluntarism and

Employees' Retirement System, one of the largest institutional investors in the United States, has used its proxy power to implement its Core Principles of Accountable Corporate Governance. It is the largest public pension fund in the United States with assets totalling more than U.S. $201 billion. For details, see CAL. PUB. EMPS.' RET. SYS., GLOBAL PRINCIPLES OF ACCOUNTABLE CORPORATE GOVERNANCE 5 (2014), http://www.calpers-governance.org/docs-sof/principles/2010-5-2-global-principles-of-accountable-corp-gov.pdf [https://perma.cc/4TER-Y6A4]. The Coalition for Environmentally Responsible Economies is a non-profit organization that includes businesses, consumer groups, environmentalists, and other stakeholders. It assists companies with the set of goals and principles it developed to improve the environmental performance of businesses operations. For more information, visit CERES, https://www.ceres.org/ [https://perma.cc/XW5W-4CJE] (last visited May 17, 2024).

55 *See* John L. Campbell, *Why Would Corporations Behave in Socially Responsible Ways? An Institutional Theory of Corporate Social Responsibility*, 32 ACAD. MGMT. REV. 946 (2007); Jeffrey S. Harrison & Shawn L. Berman, *Corporate Social Performance and Economic Cycles*, 138 J. BUS. ETHICS 279 (2016); Kun Li, Nasrin R. Khalili & Weiquan Cheng, *Corporate Social Responsibility Practices in China: Trends, Context, and Impact on Company Performance*, 11 SUSTAINABILITY 354 (2019).

56 MIA MAHMUDUR RAHIM, LEGAL REGULATION OF CORPORATE SOCIAL RESPONSIBILITY: A META-REGULATION APPROACH OF LAW FOR RAISING CSR IN WEAK ECONOMIES (2013).

57 *Id.* at 2.

58 *See* Lee Burke & Jeanne M. Logsdon, *How Corporate Social Responsibility Pays Off*, 29 LONG RANGE PLANNING 495 (1996).

value creation, as proactive behavior leads to innovation, which ultimately improves the value generated by the firm.[59] Therefore, laws governing business operations should not interfere with internal corporate objectives, as such interference can stifle innovation and prevent companies from competing at their best.[60] We believe that the neo-liberal school of thought provides the conceptual foundation for this argument.

The ideas of individualism, market freedom, and deregulation are some of the core tenets of neoliberalism. Together, these ideas advocate for a minimum or non-intervening government. Individualism emphasizes the value of one's autonomy in selecting self-interest-serving tactics. This idea is evident in neoliberalism's belief in independent legal persons. A business entity is a distinct artificial person, and as such, it is free to pursue its own goals without adhering to any rules set down by the government.[61] Neoliberalism's interpretation of "market freedom" prioritizes reliance on market forces free from any political intervention and are efficient in resource allocation.[62] This idea is closely related to deregulation, which holds that gradually relaxing or eliminating the legal regulation of business will increase the likelihood that business will be encouraged in society.[63] Neoliberalism is a method of business (de)regulation that relies more on the subject's ideological commitment than on state force. "[I]t demands the recognition of a new kind of political subjectivity: the juridical subject in the administrative state obeys a different logic to that of the economic subject within civil society."[64]

The superiority of individualized, market-based competition over other modes of organization is fundamental in neoliberalism.[65] This principle informs the question of whether a business should adopt

59 *Id.* at 495-502.

60 *See* Hens Runhaar, Casper Tigchelaar & Walter J. V. Vermeulen, *Environmental Leaders: Making a Difference. A Typology of Environmental Leaders and Recommendations for a Differentiated Policy Approach*, 17 BUS. STRATEGY & ENV'T 160, 172 (2008).

61 PAMELA HANRAHAN, IAN RAMSAY & GEOF STAPLEDON, COMMERCIAL APPLICATIONS OF COMPANY LAW 2022 (23d ed. 2022).

62 *See* Marion Fourcade & Kieran Healy, *Moral Views of Market Society*, 33 ANN. REV. SOCIO. 285, 286 (2007).

63 *See generally* Stephanie Lee Mudge, *What is Neo-Liberalism?*, 6 SOCIO-ECON. REV. 703 (2008).

64 Nick James, *Distracting the Masses: Corporate Convictions and the Legitimisation of Neo-Liberalism*, 8 MACQUARIE L.J. 179, 192 (2008).

65 Mudge, *supra* note 63, at 706.

social responsibility, as the answer depends on the competitive advantage a company gains in the market by doing so. Therefore, giving a company the freedom to decide its strategies could enable it to create a more profitable environment in which it is better able to meet the needs of its stakeholders.[66] This claim is supported by Milton Friedman, who disapproves of any policies that obligate businesses to carry out duties other than those necessary to increase profits for their investors.[67] Friedman points out that every group in society serves a definite purpose and that businesses exist to conduct business in the monetary interest of their investors.[68] He emphasizes the commercial operations of firms and argues that fulfilling social obligations results in lower profit margins for companies, thus adopting the agency theory paradigm.[69] Friedman posits that "the alleged social responsibilities of business people are nothing but agents acting inappropriately as 'civil servants,'"[70] and hence business people eventually do more of a disservice than good to society.[71] According to the Coase theorem, setting market standards is unnecessary for achieving the social optimum.[72] Ronald Coase contended that when property rights over assets are well-established and negotiation is permitted between the parties, private economic players may work out difficulties brought on by external forces among themselves.[73]

Governments often struggle to create regulatory frameworks that account for all necessary components of CSR. In some cases,

66 Marta de la Cuesta González & Carmen Valor Martinez, *Fostering Corporate Social Responsibility Through Public Initiative: From the EU to the Spanish Case*, 55 J. BUS. ETHICS 275, 288 (2004)

67 Milton Friedman, *A Friedman Doctrine: The Social Responsibility of Business is to Increase Its Profits*, NEW YORK TIMES MAG., Sept. 13, 1970, at 17; Windsor, *supra* note 10.

68 Friedman, *supra* note 67.

69 *Id.*

70 Nada K. Kakabadse, Cécile Rozuel & Linda Lee-Davies, *Corporate Social Responsibility and Stakeholder Approach: A Conceptual Review*, 1 INT'L J. BUS. GOVERNANCE & ETHICS 277 (2005).

71 *Id.* at 278-79. For details on this issue, see Geoffrey P. Lantos, *The Boundaries of Strategic Corporate Social Responsibility*, 18 J. CONSUMER MKTG. 595 (2001); Lance Moir, *What Do We Mean by Corporate Social Responsibility?*, 1 CORP. GOVERNANCE 16 (2001).

72 Ronald Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960); Michael Peters & R. Kerry Turner, *SME Environmental Attitudes and Participation in Local-Scale Voluntary Initiatives: Some Practical Applications*, 47 J. ENV'T PLAN. & MGMT. 449, 451 (2004) (citing Coase (1960) at 44).

73 N. GREGORY MANKIW, PRINCIPLES OF ECONOMICS 202 (9th ed. 2004).

conflicting norms are added to legislation, which can hinder CSR. For example, Dubbink and Putten discovered that Dutch competition law impedes CSR by prohibiting inter-firm cooperation, which is a crucial aspect of business social responsibility.[74] Additionally, Frenkel and Luire identified conflicting norms in international legal frameworks, such as the Universal Declaration of Human Rights in Israel.[75] Complex and unclear regulations can lead to noncompliance, which undermines the perception of the norms upon which the legislation is based.[76] The task of bringing together the different interests of various stakeholders in relation to CSR laws can be a challenge for governments. The lack of capacity and resources among regulators can often lead to negative consequences, hindering the progress of CSR objectives. This is particularly difficult for weaker governments, where attitudes towards the law, corruption, and economic challenges can be prevalent.[77] Moreover, having lower ethical standards can work against the benefit of mandating CSR, as it can hinder the building of uniform customer interest, unionism, and sensitive civil societies.[78] Furthermore, the failure of regulators to respond to social or environmental causes can undermine the arguments against voluntary CSR. For instance, the European Union passed a directive regulating asbestos in 1990, but EU governments only started implementing it in 2005, despite medical experts warning about the serious threat that asbestos poses to human health since 1930.[79] Studies by Graafland and

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74 *See* Wim Dubbink & Frans Paul Van der Putten, *Is Competition Law an Impediment to CSR?*, 83 J. BUS. ETHICS 381 (2008).

75 *See* David A. Frenkel & Yotam Lurie, *Human Rights in Industrial Relations – The Israeli Approach*, 12 BUS. ETHICS: EUR. REV. 33 (2003).

76 Christopher D. H. Wilson, Ian David Williams & Simon Kemp, *Compliance with Producer Responsibility Legislation: Experiences from UK Small and Medium-Sized Enterprises*, 20 BUS. STRATEGY & ENV. 310 (2011).

77 Nikolay A. Dentchev, Mitchell van Balen & Elvira Haezendonck, *On Voluntarism and the Role of Governments in CSR: Towards a Contingency Approach*, 24 BUS. ETHICS: EUR. REV. 378, 390 (2015).

78 *See* Antonio Argandoña, *Business Ethics in Modern Spain*, 5 BUS. ETHICS: EUR. REV. 19 (1996); Stella Kavali, Nikolaos Tzokas & Michael A. J. Saren, *Corporate Ethics: An Exploration of Contemporary Greece*, 30 J. BUS. ETHICS 87 (2001).

79 *See* Richard C. Warren, *The Responsible Shareholder: A Case Study*, 11 BUS. ETHICS: EUR. REV. 14 (2002).

Campbell & Mínguez-Vera further illustrate that governments are not the only solution to promoting CSR.[80]

B. Ideological Basis of the Mandatory Approach in CSR Regulation

The idea that government has a political obligation to ensure everyone's well-being and the equitable distribution of resources forms the basis of the mandatory approach to CSR regulation. A government's laws should serve the general welfare by ensuring that the market's profits are shared fairly among all members of society. The concept of "realism," which has various definitions across fields, is the conceptual cornerstone of this argument. Realism centers on a subject's current needs, assertions, and subtleties in a particular situation. It is a dominating school of thought focused on reality and fact and is opposed to idealistic and unworkable notions. Contrary to Platonism and philosophical realism or idealism, the concepts of realism underpinning CSR principles in corporate self-regulation believe that reality should be prioritized.[81]

According to realists, "states perform essential political, social and economic functions, and no other organization rivals them in these respects."[82] States are viewed as logical agents who behave according to their best interests.[83] Realists also believe that states are unitary agents with functional similarities.[84] Any disagreements among political figures or other domestic actors inside the state are ultimately settled so that the state can speak with one voice.[85] Realists contend that the government should regulate companies to address public demands for the rectification of inefficient or unfair market practices, to ensure

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80 *See* Johan J. Graafland, *Collusion, Reputation Damage and Interest in Codes of Conduct: The Case of a Dutch Construction Company*, 13 BUS. ETHICS: EUR. REV. 127 (2004); Kevin Campbell & Antonio Mínguez-Vera, *Gender Diversity in the Boardroom and Firm Financial Performance*, 83 J. BUS. ETHICS 435 (2008).

81 For details on "realism," see ANDREW SAYER, REALISM AND SOCIAL SCIENCE (2000); Oliver E. Williamson, *Revisiting Legal Realism: The Law, Economics, and Organization Perspective*, 5 INDUS. & CORP. CHANGE 383 (1996); Bryant Garth & Joyce Sterling, *From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State*, 32 L. & SOC'Y REV. 409 (1998).

82 SCOTT BURCHILL, REALISM AND NEO-REALISM 96 (2000).

83 *Id.* at 93.

84 JOHN M. HOBSON, THE STATE AND INTERNATIONAL RELATIONS 20 (2000); PAUL R. VIOTTI & MARK V. KAUPPI, INTERNATIONAL RELATIONS THEORY: REALISM, PLURALISM GLOBALISM, AND BEYOND (1999).

85 VIOTTI & KAUPPI, *supra* note 84, at 174, 200.

that mechanisms exist that benefit society as a whole rather than only vested interests, and to ensure that resources are allocated to beneficial uses.[86] The following conditions, which support these claims, could also be connected to CSR.

First, corporate governance is under increasing pressure to reflect the changes in the values and conditions of the society in which they operate, even if it means forgoing short-term financial gain. This is because the pursuit of profit alone is no longer the company's exclusive goal.[87] Due to the intimate linkages between commercial activity and social, environmental, and political systems, corporate activities have a wide range of effects on individuals, communities, countries, and the entire human species, such as unemployment or pollution.[88] The concept of CSR conceptualizes this advancement in corporate governance and legislation and posits that businesses are accountable for aiding in this advancement. Unethical company behavior may result in social and environmental catastrophes and bring misery to shareholders, consumers, and employees.[89] As a result, social policies, rather than profits, are used to evaluate corporate success.

Finally, businesses are the commercial centers in society and are essential to both economic and societal advancement. Today they are more potent than ever and the actors in society with greatest ability to support social and environmental activities.[90] The expanding influence

86 Bob Jessop, *Capitalism, the Regulation Approach, and Critical Realism*, *in* CRITICAL REALISM AND MARXISM 88 (2003).

87 *See generally* Fiona Wilson & James E. Post, *Business Models for People, Planet (& Profits): Exploring the Phenomena of Social Business, a Market-Based Approach to Social Value Vreation*, 40 SMALL BUS. ECON. 715 (2013); J. Haskell Murray & Edward I. Hwang, *Purpose with Profit: Governance, Enforcement, Capital-Raising and Capital-Locking in Low-Profit Limited Liability Companies*, 66 U. MIAMI L. REV. 1 (2011); Shahriar Akter, Nabila Jamal, Md Mahfuz Ashraf, Grace McCarthy & PS Varsha, *The Rise of the Social Business in Emerging Economies: A New Paradigm of Development*, 11 J. SOC. ENTREPRENEURSHIP 282 (2020); Dina Dalessandro, *The Development of Social Enterprise and Rise of Benefit Corporations: A Global Solution*, 15 HASTINGS BUS. L.J. 294 (2019).

88 *See, e.g.*, Cécile Renouard & Cécile Ezvan, *Corporate Social Responsibility Towards Human Development: A Capabilities Framework*, 27 BUS. ETHICS: EUR. REV. 144 (2018) (discussing corporate activity's effect on human development in particular).

89 *See* Juholin, *supra* note 48 at 21-22.

90 *See id.* at 21.

of corporations is the main reason the general public is becoming more aware of the potential negative effects of business.[91]

Amengual and Bartley have discovered that regulatory intervention in the market is on the rise.[92] This trend is providing new insights into the sociology of markets, morality, policy, and globalization.[93] The main reason for the increase in regulatory intervention is the failure of market actors to act rationally.[94] Gregory Mankiw argues that, despite the compelling logic of the Coase theorem, externality-related issues are frequently too complex for private players to address on their own.[95] It is impossible to guarantee that corporate negotiation will always result in a win-win situation, and mutually beneficial agreements may be the products of imperfect bargaining. As such, ideal results are rarely consistently attained. In the actual world, for instance, most businesses do not aim to improve their environmental performance during environmental development.[96]

The relationship between corporate responsibility and the law is undeniably close.[97] In their study, Kavali, Tzokas, and Saren found all the participants in the study acknowledged that the government plays a pivotal role in addressing public concerns, establishing legislation, and setting ethical standards.[98] The results of the study by Tencati, Perrini, and Pogutz further elaborate that public support for corporate responsibility initiatives can generate numerous benefits, such as

91 Lez Michael Rayman-Bacchus, *Reflecting on Corporate Legitimacy*, 17 CRITICAL PERSPS. ACCT. 323, 325 (2006).

92 Matthew Amengual & Tim Bartley, *Global Markets, Corporate Assurances, and the Legitimacy of State Intervention: Perceptions of Distant Labor and Environmental Problems*, 87 AM. SOCIO. REV. 383, 383 (2022).

93 *Id.* at 409.

94 *See* Giandomenico Majone, *The Rise of the Regulatory State in Europe*, 17 W. EUR. POL. 77, 79 (1994).

95 N. GREGORY MANKIW, PRINCIPLES OF MICROECONOMICS 204 (8th ed. 2018). *See generally* HA-JOON CHANG, GLOBALISATION, ECONOMIC DEVELOPMENT, AND THE ROLE OF THE STATE (2003); Joseph Stiglitz, *Some Lessons from the East Asian Miracle*, 11 WORLD BANK RSCH. OBSERVER 151 (1996). The Coase Theorem states, "if trade in an externality is possible and there are no transaction costs, bargaining will lead to an efficient outcome regardless of the initial allocation of property rights." Jodi Beggs, *Introduction to the Coase Theorem*, THOUGHTCO (Jan. 17, 2019), https://www.thoughtco.com/introduction-to-the-coase-theorem-1147386 [https://perma.cc/JFN7-HGSU].

96 Peters & Turner, *supra* note 72, at 451.

97 Céline Gainet, *Exploring the Impact of Legal Systems and Financial Structure on Corporate Responsibility*, 95 J. BUS. ETHICS 195, 196 (2010).

98 Kavali et al., *supra* note 78, at 87.

reinforcing social cohesiveness, propagating knowledge and best practices of CSR, fostering new partnerships to tackle societal issues, and creating socially responsible investment opportunities and ethical pension funds.[99] Albareda, Lozano, Tencati, Midttun, and Perrini push the envelope further by describing CSR as a concept within governmental action.[100] It is important to note that government involvement in CSR matters does not skew market rationality; rather, it ensures that businesses fulfill their obligations in exchange for the advantages they receive from public policy, social protection, and a wider range of business opportunities. Regulation, therefore, may not necessarily be a disadvantage; it can create incentives for implementing CSR principles by ensuring a level playing field, creating obstacles for free-riders, and guaranteeing the security of business transactions.[101]

There is a noticeable shift in the conversation around CSR from a voluntary action to a mandatory one.[102] This change carries significant implications for corporate strategy, legal obligations, management practices, and individual behavior. It affects the implementation of organizational programs at both individual and organizational levels. However, mandating specific approaches presents challenges. In some instances, it can worsen the situation as people and organizations may attempt to avoid, undermine, or oppose the rules, resulting in a loss of intrinsic motivation and reduced compliance.[103] Nonetheless, both voluntary and mandatory approaches are based on adequate ideologies and are commonly utilized to implement CSR concepts into business operations. This Article assesses the effectiveness of these approaches through case studies of CSR implementation in Australia and India.

99 Antonio Tencati, Francesco Perrini & Stefano Pogutz, *New Tools to Foster Corporate Socially Responsible Behavior*, 53 J. BUS. ETHICS 173, 174 (2004).

100 Laura Albareda, Josep M. Lozano, Antonio Tencati, Atle Midttun & Francesco Perrini, *The Changing Role of Governments in Corporate Social Responsibility: Rrivers and Responses*, 17 BUS. ETHICS: EUR. REV. 347, 348 (2008).

101 Michael E. Porter & Claas van der Linde, *Toward a New Conception of the Environment-Competitiveness Relationship*, 9 J. ECON. PERSPS. 97, 98 (1995).

102 *See* Marta Cominetti & Peter Seele, *Hard Soft Law or Soft Hard Law? A Content Analysis of CSR Guidelines Typologized Along Hybrid Legal Status*, 24 UWF UMWELTWIRTSCHAFTSFORUM 127 (2016); Arno Kourula, Jeremy Moon, Marie-Laure Salles-Djelic & Christopher Wickert, *New Roles of Government in the Governance of Business Conduct: Implications for Management and Organizational Research*, 40 ORG. STUD. 1101 (2019).

103 *See* Khan et al., *supra* note 6, at 10-13.

IV. CSR REGULATION IN AUSTRALIA

This Part will overview Australia's voluntary approach towards CSR regulation and critically assess the credentials of CSR reporting in the country.

The CSR regulatory framework Australia is primarily comprised of voluntary initiatives, with few mandatory requirements prescribed by law. While no specific statute regulates CSR activities in Australia, several relevant statutes include mandatory provisions. The principal regulatory framework for CSR regulation in Australia is found within corporate law, and the Corporations Act 2001 in particular.[104] While Australian law contains few CSR requirements, the Corporations Act includes some obligations regarding directors' duties and measures regarding sustainability and the environment. Section 181(1)(a) of the Corporations Act mandates that company directors discharge their duties and execute their powers in good faith and in the best interests of their corporation.[105] It is expected that, as part of these duties, directors will consider shareholders' interests as part of the best interests of the corporation.[106] While this inclusion is relevant to CSR, Australian law does not contain any specific obligations for shareholder interest.

Australian CSR regulation also requires non-financial reporting, particularly concerning environmental actions and sustainability.[107] Several regulations mandate forms of environmental reporting for Australian corporations. Registered corporations must report information about greenhouse gas emissions and energy production to the Regulator each financial year under the National Greenhouse and Energy Reporting Act 2007.[108] The civil penalty for not complying with this obligation is 2,000 penalty units.[109] Section 299(1)(f) of the Corporations Act requires corporations to produce a director's report detailing their performance and actions concerning environmental

104 *Corporations Act 2001* (Cth) (Austl.).

105 *Id.* s 181(1)(a).

106 Thirarungrueang, *supra* note 14, at 178.

107 Section 299 (1)(f) of the Corporations Act 2001 requires that the Directors' Report for a financial year for companies whose operations were "subject to any particular and significant environmental regulation" must have details of the entity's performance in relation to such regulation. *Corporations Act 2001* (Cth) s 299(1)(f) (Austl.). For the latest of this reporting requirement, see PWC, AUSTRALIAN SUSTAINABILITY REPORTING UPDATE (2024).

108 *National Greenhouse and Energy Reporting Act 2007* (Cth) s 3 (Austl.).

109 *Id.*, s 12.

regulations.[110] Section 1013D(1) of the Corporations Act also contains provisions relating to mandatory reporting standards for financial products.[111] It mandates disclosures for financial products and, for products containing investment components, "the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment."[112] The Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 amends portions of the Corporations Act, with section 299A relevant to CSR regulations for listed public companies.[113] Section 299A requires that a director's report be produced each financial year which "must . . . contain information that members of the company would reasonably require to make an informed assessment" of the corporation's operations, financial situation, business strategies, and future financial prospects.[114] Such reports are expected to include information regarding environmental issues or other concerns that may affect the corporation's ongoing financial performance.[115] Directors who do not comply with section 299A and fail to report this information may be penalized up to $200,000, while corporations can be penalized $1 million.[116]

The Australian Securities and Investments Commission ("ASIC") grants licenses to financial institutions and oversees them to ensure that their actions adhere to the standards outlined in the Corporations Act 2001 and the Banking Act 1959. Infringement letters, civil fines, and criminal prosecution are all possible punishments for violating the provisions of these legislations.[117] A Memorandum of Understanding that outlines the relationship between ASIC and the

110 *Corporations Act of 2001* (Cth) s 299(1)(f) (Austl.); Thirarungrueang, *supra* note 14, at 275-76.

111 *Corporations Act 2001* (Cth) s 1013(D)(1) (Austl.).

112 *Id*.

113 *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) 2004* (Cth) s 299A (Austl.).

114 *Id.*

115 Thirarungrueang, *supra* note 14, at 185.

116 *Id.* at 186.

117 *Information Sheet 151: ASIC's Approach to Enforcement*, Australian Securities & Investments Commission (2013), https://asic.gov.au/about-asic/asic-investigations-and-enforcement/asic-s-approach-to-enforcement/ [https://perma.cc/6RJA-WJK7].

Australian Prudential Regulatory Authority ("APRA") is in effect, and the two organizations collaborate closely.[118]

The APRA is responsible for developing and upholding prudential rules and procedures that reduce the possibility of financial institutions' collapse and failure to fulfill their obligations to customers.[119] Financial soundness, risk management, and governance requirements are all part of the prudential norms set by APRA,[120] which relate to the stakeholder, economic, and social aspects of CSR. Substantial penalties, such as canceling the institution's license to offer financial services, may be imposed if an institution violates APRA regulations.[121] The Australian Banking Association ("ABA"), is the industry association for Australian banks.[122] Member banks can adopt the ABA-administered Banking Code of Practice 2021 ("BCoP"),[123] which contains CSR's social, stakeholder, and accountability aspects.[124] Warnings and instructions to make amends or take corrective action are issued for violations of the BCoP.[125] Banks are not penalized for their failure to adhere to rules set forth by the ABA.

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118 Memorandum of Understanding Between the Australian Prudential Regulation Authority and the Australian Security and Investments Commission (Nov. 28, 2019), https://www.apra.gov.au/sites/default/files/APRA-ASIC%20Memorandum%20of%20Understanding%202019.pdf [https://perma.cc/44H4-SZ9P].

119 *About Us*, AUSTRALIAN PRUDENTIAL REGUL. AUTH., https://www.apra.gov.au/about-apra [https://perma.cc/6LLV-7FCJ] (last visited Feb. 8, 2024).

120 *APRA's Functions*, AUSTRALIAN PRUDENTIAL REGUL. AUTH., https://www.apra.gov.au/what-does-apra-do [https://perma.cc/43QK-8MCA] (last visited Feb. 8, 2024).

121 *Notify a Breach*, AUSTRALIAN PRUDENTIAL REGUL. AUTH., https://www.apra.gov.au/notify-a-breach [https://perma.cc/U7GQ-8VNX] (last visited May 17, 2024).

122 *About Us*, AUSTRALIAN BANKING ASS'N, https://www.ausbanking.org.au/about-us/the-aba/ [https://perma.cc/N97W-FSYD] (last visited Feb. 6, 2024).

123 *The Banking Code*, AUSTRALIAN BANKING ASS'N, https://www.ausbanking.org.au/banking-code/ [https://perma.cc/4F9L-YK8R] (last visited May 17, 2024).

124 AUSTRALIAN BANKING ASS'N, BANKING CODE OF PRACTICE 1, 5 (2021), https://www.ausbanking.org.au/wp-content/uploads/2021/10/2021-5-Oct-Banking-Code-WEB.pdf [https://perma.cc/X7AT-NBC3].

125 *See Raise a Concern*, BANKING CODE COMPLIANCE COMM., https://bankingcode.org.au/customers/raise-a-concern/ [https://perma.cc/KX2R-X28C] (last visited May 17, 2024).

ASIC and the Reserve Bank of Australia regulate the Australian Securities Exchange ("ASX"). ASX is in charge of monitoring ASX-listed firms for compliance with the ASX Listing Rules, implementing the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, and disseminating information.[126] Although following the Principles is optional, businesses must inform the ASX and investors if and why they have chosen not to abide by them.[127]

Several other sources also guide companies' adherence to CSR. *Triple Bottom Line Reporting in Australia: A Guide to Reporting against Environmental Indicators*, a handbook for public environmental reporting, was created by the Department of the Environment and Heritage in 2003.[128] Australia also adheres to various human rights standards, which are protected by legislation such as the NSW Anti-Discrimination Act 1977[129] and the federal legislations that combat discrimination on the basis of age,[130] race,[131] and disability;[132] and the Fair Work Act,[133] which sets out minimum standards for working terms and conditions, as well as other aspects of employment. Other Australian legislation assists with the regulation of corporate social responsibility, such as the Native Title Act,[134] but no Australian

126 *About Us*, AUSTRALIAN SEC. EXCH., https://www.asx.com.au/about [https://perma.cc/6PV6-42SE] (last visited Feb. 20, 2024); *Listings Compliance*, AUSTRALIAN SEC. EXCH., https://www.asx.com.au/about/regulation/asx-compliance/listings-compliance [https://perma.cc/PG5Y-68PY] (last visited Feb. 6, 2024).

127 Two of the principles closely related to CSR are Principles 3 and 7. Principle 3 is about promoting ethical and responsible decision-making, and Principle 7 is about recognizing and managing risks related to the stakeholders. *See* ASX CORP. GOVERNANCE COUNCIL, CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS 2 (4th ed. 2019), https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf [https://perma.cc/3VCC-PAP2].

128 DEP'T OF THE ENV'T & HERITAGE, TRIPLE BOTTOM LINE REPORTING IN AUSTRALIA: A GUIDE TO REPORTING AGAINST ENVIRONMENTAL INDICATORS (2003).

129 *Anti-Discrimination Act 1977* (NSW) (Austl.).

130 *Age Discrimination Act 2004* (Cth) (Austl.).

131 *Racial Discrimination Act 1975* (Cth) (Austl.).

132 *Disability Discrimination Act 1992* (Cth) (Austl.).

133 *Fair Work Act 2009* (Cth) (Austl.).

134 *Native Title Act 1993* (Cth) (Austl.).

federal or state legislations require corporations to take any particular acts that further corporate social responsibility.[135]

The Australian CSR regulatory framework consists of numerous other types of CSR initiatives. This may include codes of conduct or corporate guidelines to which corporations voluntarily adhere or schemes such as payroll giving, where employees donate an ongoing portion of their salary to a designated charity.[136] Australia's CSR regulations can primarily be characterised as voluntary initiatives, with some mandatory non-financial disclosure (CSR reporting) at the core of its regulatory approach.[137]

A. Quality of CSR Reporting in Australia

The history of CSR reporting in Australia is fascinating. Although the concept and development of CSR have been widely discussed over the years,[138] Australia has failed to develop effective and strategic CSR legislation to induce corporations to report their social responsibility performance in a meaningful, accurate, and easily comparable manner.[139]

In Australia, low CSR reporting has led to three different national inquiries into how to make corporations more socially responsible through an expansion of directors' duties under the law.[140] The

135 Australia relies on a voluntary CSR approach. Thirarungrueang, *supra* note 14, at 173-74.

136 Debbie Haski-Leventhal, *Employee Engagement in CSR: The Case of Payroll Giving in Australia*, 20 CORP. SOC. RESP. & ENV'T MGMT. 113, 113 (2013)

137 Thirarungrueang, *supra* note 14, at 186-87. As Eric Mayne stated in 2009, "Disclosure and the informed shareholder go hand in hand. Shareholders would only be able to exercise their rights in a responsible, informed and considered way only if companies uphold the highest standards of disclosure and transparency. It is not about boiler plate reporting nor is it about tick-a-box compliance—the key is quality reporting." Gill North, *A Call for a Bold and Effective Corporate Disclosure Regulatory Framework* 10 (Univ. of W. Austl., Rsch. Paper, 2010).

138 *See* Julia Tolmie, *Corporate Social Responsibility*, 15 UNIV. N.S.W. L.J. 268 (1992); *see also* Bernard McCabe, *Are Corporations Socially Responsible? Is Corporate Social Responsibility Desirable?*, 4 BOND L. REV. 1 (1992); Anderson & Gumley, *supra* note 25.

139 Thirarungrueang, *supra* note 14, at 174.

140 Helen L. Anderson & Ingrid Landau, *Corporate Social Responsibility in Australia: A Review* 2 n.1 (Monash Univ. Dep't of Bus. L. & Tax'n Rsch. Paper Ser. No. 4 & Univ. of Melbourne, Fac. of L. Legal Stud. Rsch. Paper Ser. No. 279, 2007). *See generally* PARLIAMENTARY JOINT COMM. ON CORPS. & FIN. SERVS., CORPORATE RESPONSIBILITY: MANAGING RISK AND CREATING VALUE (2006),

recommendations from these inquiries have all been rejected, however. In its June 2006 report, the Parliamentary Joint Committee on Corporations and Financial Services concluded that CSR reporting should remain voluntary.[141] One major concern raised was that a mandatory reporting system would promote "form over substance."[142] In other words, the Joint Committee thought that it would be more desirable for corporations "to be encouraged strongly to engage voluntarily in sustainability reporting rather than being forced to do so."[143] Such conclusions were reached even though the Parliamentary Joint Committee mentioned that under "international standards, Australia lags in implementing and reporting on corporate responsibility."[144] In addition to the Committee's findings, the report also contained a supplementary document expressing a range of views and suggestions from several Australian Labor Party members to encourage more corporations to increase their sustainable business practices.[145] The report suggested that the government require all public and private corporations of a certain size to publicly disclose their sustainability risks and strategies, similar to the United Kingdom's business review.[146]

The primary legislation governing CSR reporting is the Corporations Act 2001. Part 2M.3 of this Act describes periodic reporting and audit provisions.[147] Chapters 6, 6A, and 6B include disclosure provisions related to takeovers, compulsory acquisitions, and buy-out events.[148] Chapter 6CA includes provisions related to the continuous disclosure obligations of corporations and Sections 727-37 under Chapter 6D describes the rules for fundraising through disclosure documents.[149] Under this Act, corporations disclosing directors' reports are required to include information about the entity's environmental performance, including, for example, whether it has breached any

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https://www.aph.gov.au/~/media/wopapub/senate/committee/corporations_ctte/completed_inquiries/2004_07/corporate_responsibility/report/report_pdf.ashx [https://perma.cc/3RF2-CAD3].

141 PARLIAMENTARY JOINT COMM. ON CORPS. & FIN. SERVS., *supra* note 140, at xix.

142 *Id.* at 88 (¶ 6.45).

143 *Id.* at 89.

144 *Id.* at xiii.

145 *Id.* at 172-200.

146 *Id.* at 132-33.

147 *See Corporations Act 2001* (Cth) pt 2M.3 (Austl.).

148 *See id.* chs 6-6B.

149 *See id.* chs 6CA, 6D. For a detailed discussion of these provisions, see GILL NORTH, COMPANY DISCLOSURE IN AUSTRALIA (2012).

environmental laws.[150] This provision is applicable only if the corporations' operations are subject to environmental regulation under any commonwealth or state law.[151] A broader provision can be found under Section 1013D of this Act, which requires corporations offering financial products with an investment component to disclose "the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment."[152]

Other notable regulations related to CSR reporting include the Energy Efficiency Opportunities Act 2006 and the Greenhouse and Energy Reporting Act 2007. The Energy Efficiency Opportunities Act 2006 required large energy-consuming corporations to assess their energy-saving strategies and to publicly disclose their results until it was repealed in 2014.[153] The Greenhouse and Energy Reporting Act 2007, which requires corporations to report specific greenhouse-related matters.[154] Whether these legal provisions are effective in raising CSR reporting quality remains unclear;[155] some scholars have highlighted that these provisions are misleading and hence cannot meet their objective.[156] This has been explicated by Alan Dignam and Michael Galanis's study comparing the disclosure provisions in the United Kingdom, the United States, and Australia. In this study, the authors argued that Australia has "comparable legislative disclosure standards to those in the UK and the US . . . [which] have not been properly enforced"[157] and that such "lax enforcement undermines legal protection of investors."[158] They further argued that Australian disclosure

150 *Corporations Act 2001* (Cth) s 299(1)(f) (Austl.).

151 *Id.*

152 *Id.* s 1013D(1)(l).

153 *Energy Efficiency Opportunities Act 2006* (Cth) s 3(2)(a)-(b) (Austl.) (repealed by the Energy Efficiency Opportunities (Repeal) Act 2014).

154 *National Greenhouse and Energy Reporting Act 2007* (Cth) pt 3 (Austl.); *see also* Anne Durie, *Legal Requirements for CSR Reporting in the United Kingdom, Denmark and Australia*, 2 J. AUSTRALASIAN L. TCHRS. ASS'N 11, 20 (2009).

155 *See* Andrew Cassidy & Larelle Chapple, *Australia's Corporate Disclosure Regime: Lessons from the US Model*, 15 AUSTRALIAN J. CORP. L. 81 (2003).

156 *See* Lori Semaan, Mark A. Freeman & Michael A. Adams, *Is Insider Trading a Necessary Evil for Efficient Markets?: An International Comparative Analysis*, 17 CO. & SEC. L.J. 220, 240 (1999).

157 Alan Dignam & Michael Galanis, *Australia Inside-Out: The Corporate Governance System of the Australian Listed Market*, 28 MELBOURNE UNIV. L. REV. 623, 645 (2004).

158 *Id.* at. 648.

provisions have failed to make public information sufficiently available to corporate stakeholders.[159]

The significant development in Australia with regards to setting CSR reporting standards has been the publication of the Australian Stock Exchange ("ASX") Corporate Governance Principles and Recommendations.[160] Under Recommendation 7.4 of the new edition, "[a] listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks."[161] While these Principles and Recommendations apply to all ASX-listed entities, they are not mandatory. ASX Listing Rule 4.10.3 requires entities, in the corporate governance statement of their annual report, to disclose the extent to which the corporation has followed the recommendations set by the ASX Corporate Governance Council during the reporting period, and if a recommendation has not been followed, explain why.[162] While the implementation of Recommendation 7.4 is promising, whether it will successfully improve the current CSR reporting standards remains to be seen.

It should be acknowledged that, despite the lack of direct, detailed, and firm legislation, CSR reporting in Australia does not appear to be as low as one might expect, as reporting numbers have increased significantly in the past couple of years.[163] In practice, however, this seems to apply mainly to the country's largest corporations, as noted by the Australian Council of Superannuation Investors ("ACSI"), which, in 2018, published its recent analysis of the CSR reports of the country's 200 largest corporations by stock value.[164] This analysis

159 *Id.* at 642.

160 The fourth edition of this document released in 2019, see ASX CORP. GOVERNANCE COUNCIL, *supra* note 127. The original version of this document can be found at *ASX Corporate Governance Council*, ASX, https://www.asx.com.au/about/regulation/asx-corporate-governance-council [https://perma.cc/Z4Y7-XCL5] (last visited May 17, 2024).

161 ASX CORP. GOVERNANCE COUNCIL, *supra* note 127, at 27 (citations omitted).

162 AUSTL. SEC. EXCH., LISTING RULES 409 (2019) (Ch. 4). The Listing Rules can be located at *ASX Listing Rules*, ASX, https://www.asx.com.au/about/regulation/rules-guidance-notes-and-waivers/asx-listing-rules-guidance-notes-and-waivers [https://perma.cc/SZ5N-PE2D] (last visited May 17, 2024).

163 KPMG INT'L, THE KPMG SURVEY OF CORPORATE RESPONSIBILITY REPORTING 2013 11, 22 (2013), https://assets.kpmg.com/content/dam/kpmg/pdf/2013/12/corporate-responsibility-reporting-survey-2013.pdf [https://perma.cc/26R6-A4CK].

164 AUSTRALIAN COUNCIL OF SUPERANNUATION INVS., CORPORATE SUSTAINABILITY REPORTING IN AUSTRALIA: AN ANALYSIS OF ASX200 DISCLOSURE

revealed that only 48% of the largest 200 ASX listed companies disclosed their climate related policies.[165] Only 42 of these 200 companies had GHG emission reduction target.[166] Only 22 companies responded on the adoption of the Task Force for Climate-related Financial Disclosure Responses (TCFD).[167] The Financial Stability Board and the International Sustainability Standards Board have established the TCFD, which is critical for creating global standards for environmental, climate change-related, and social reporting. However, the low rate of adoption of this framework by ASX 200 is concerning. The KPMG Australia's examination of public disclosures of around 600 ASX-listed companies in 2022 found disclosures of varied depths.[168] It revealed that "a majority of the sampled entities did not specify who conducted verifications of the integrity of periodic corporate reports (that were not audited or reviewed by an external auditor), nor called out how verifications were undertaken."[169] This examination also found instances of entities reporting no material exposure to environmental and social risks being out of step with same sector peers.[170]

In his study, Richard Turner finds that Australian companies' CSR reporting standard is lower than those in the United States and Europe.[171] This finding stemmed from a study by Stephen Chen and Petra Bouvain. In their research on CSR reporting in the United States, United Kingdom, Australia, and Germany, Chen and Bouvain found that Australian corporations engage in a "satisficing" behavior, meaning that they only prepare their CSR reports and reports on legally

(2018), https://acsi.org.au/wp-content/uploads/2020/02/2018-Sustainability-Report-FINAL-June-2018.pdf.

165 *Id.* at 6.

166 *Id.*

167 *Id.*

168 *ASX Corporate Governance Principles and Recommendations*, KPMG (June 28, 2022), https://kpmg.com/au/en/home/insights/2022/06/asx-corporate-governance-principles-recommendations.html [https://perma.cc/8SA5-9K7X].

169 *Id.*

170 *Id.*

171 Richard J. Turner, *Corporate Social Responsibility: Should Disclosure of Social Considerations be Mandatory?* 9 (Submission to the Parliament Joint Comm. on Corps. & Fin. Servs. Inquiry, 2006), https://www.aph.gov.au/~/media/wopapub/senate/committee/corporations_ctte/completed_inquiries/2004_07/corporate_responsibility/submissions/sub05_pdf.ashx [https://perma.cc/W7GX-HXDT].

required areas.[172] One of the vital reasons for such ineffective and quality-less CSR reporting could be the voluntarism attached to this reporting practice. Kunanawee Thirarungrueang finds that the "major problem with the system of voluntary reporting, apart from its non-enforcement nature, is its lack of structure and uniformity. . . . While companies are unlikely to highlight their failures in promoting social standards, they are able to present their reports with emphasis on their positive results, to the extent that some reports may fall into the 'public relations exercise' of 'advertising' category."[173]

While it seems that a mandatory CSR approach can improve the quality and level of CSR disclosure, it is evident that a highly regulated system is not necessarily the best path. In fact, countries that do not have the most robust CSR regulatory frameworks tend to produce the highest quality CSR reports. In a study conducted by KPMG on corporate responsibility reporting quality,[174] Italy scored 85 out of a possible 100 points, followed by Spain with 79 points, the United Kingdom with 76 points, and France and Australia with 70.[175] In fact, while Italy and Spain regulate CSR, their provisions are not as numerous or strong as those in countries such as Denmark and France.[176] Moreover, the literature has observed how regulatory schemes are often marred by inefficiency, over-deterrence, inability to rapidly change in relation to evolving societal expectations, enforcement limitations, and over-focus on minimal compliance in relation to a command-and-control system.[177] On the other hand, markets can only

172 Stephen Chen & Petra Bouvain, *Is Corporate Responsibility Converging? A Comparison of Corporate Responsibility Reporting in the USA, UK, Australia, and Germany*, 87 J. BUS. ETHICS 299, 312 (2009).

173 Thirarungrueang, *supra* note 14, at 188.

174 The KMPG report includes an in-depth assessment of the quality of G250 reports based on seven criteria: (1) strategy risk and opportunity, (2) materiality, (3) targets and indicators, (4) suppliers and the value chain, (5) stakeholder engagement, (6) governance of corporations, and (7) transparency and balance. KPMG INT'L, *supra* note 163, at 8.

175 *Id.* at 16.

176 *Id.* at 24.

177 CHRISTINE PARKER, THE OPEN CORPORATION: EFFECTIVE SELF-REGULATION AND DEMOCRACY 8 (2002). Most particularly, it is well explicated that the deterrence impact of hard legislations "recedes drastically as the likelihood of successful usage lessens. Hence, [legislations] that are intended to enhance market integrity and investor protection have relatively negligible effect if there exist widespread non-compliance." Marc I Steinberg, *Insider Trading, Selective Disclosure, and Prompt Disclosure: A Comparative Analysis*, 22 U. PA. J. INT'L ECON. L. 635, 676 (2001).

uphold important social standards independently if business gain direct benefits.[178] Therefore, legislation must extend beyond increasing CSR reporting numbers and, more importantly, the report quality.

V. CSR REGULATION IN INDIA

This Part discusses the India's involuntary approach to implementation of CSR principles and assesses the impact of the country's CSR law on raising corporate commitment to social causes.

The Companies Act 2013 contains the main CSR-regulating provisions in India, prioritizing the interests of all stakeholders, not just shareholders.[179] According to the Second High-Level Committee Report of the Ministry of Corporate Affairs in 2018, the Act aims to make businesses more "socially, economically, and environmentally responsible."[180] It is one of the only laws in the world that requires firms not only to engage in CSR activities but also to spend a certain amount annually on specific CSR initiatives.[181]

Section 135 of the Act provides the substantive law on CSR and Schedule VII lists the issues that CSR activities may address.[182] The Act institutionalizes CSR within companies by requiring that companies constitute mandatory board committees comprising three or more directors, one of whom must be an independent director.[183] Only companies with a net worth of ₹500 crore or more, a turnover of ₹1,000 crore or more, or a net profit of ₹5 crore or more during any financial year must follow Section 135.[184] The committee responsible for formulating policies must indicate the activities the company will undertake, the expenditure for implementing the activities, and propose the mechanism for monitoring the activities.[185] The Board must ensure that the company spends, "in every financial year, at least, two per cent of the average net profits made during the three immediately preceding financial years, in pursuance of its Corporate Social

178 Lester M. Salamon, *The New Governance and the Tools of Public Action: An Introduction*, 28 FORDHAM URB. L.J. 1611, 1635-36 (2011).

179 Jumde & Du Plessis, *supra* note 28, at 171.

180 INDIA MINISTRY OF CORP. AFFS., REPORT OF THE HIGH LEVEL COMMITTEE ON CORPORATE SOCIAL RESPONSIBILITY 2018, at 22 (2019).

181 Jumde & Du Plessis, *supra* note 28, at 171.

182 *See* The Companies Act, 2013, sched. 7 (India).

183 *Id.* § 135(1).

184 *Id.*

185 *Id.* §135(3).

Responsibility Policy."[186] The Board needs to disclose the composition of the CSR committee and its activities in the Board's report.[187] Both Section 135 and Schedule VII were amended by the new government,[188] and the Companies (Corporate Social Responsibility Policy) Rules were created in 2014.[189] In addition to the Board reports, the Rules specify that the company's CSR activities need to be placed on the company's website.[190]

India's regulatory approach requires companies to identify social and environmental risks associated with business operations and establish, enact, and execute plans to navigate and prevent potential harm toward social and environmental elements.[191] With the advent of penalties within India's Companies Act, non-compliance with CSR provisions permits the government to impose directive measures.[192] The Companies (Amendment) Act, 2019 imposes fines on officers responsible for CSR compliance. Although seemingly harsh,[193] this regulatory amendment, which contained a penalty of imprisonment until

186 *Id.* §135(5).

187 *Id.* § 135(4)(a).

188 *The Companies (Amendment) Bill, 2014*, PRS LEGISLATIVE RESEARCH, https://prsindia.org/billtrack/the-companies-amendment-bill-2014 [https://perma.cc/B8Z6-VQ9H] (last visited May 17, 2024).

189 *See generally* GOV'T OF INDIA, MINISTRY OF CORP. AFFS., THE COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) RULES, 2014 (2014), https://www2.deloitte.com/content/dam/Deloitte/in/Documents/risk/Corporate%20Governance/in-cg-csr-rules-notification-270214-noexp.pdf [https://perma.cc/Y7AF-JQZ2].

190 The Companies (Corporate Social Responsibility Policy) RULES, *supra* note 189, rule 9.

191 Li-Wen Lin, *Mandatory Corporate Social Responsibility Legislation Around the World: Emergent Varieties and National Experiences*, 23 U. PA. J. BUS. L. 429, 443-44 (2021)

192 The Companies Act, 2013, §135(8) (India).

193 *Id.* §135(7) ("If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less..").

2021, changed the "comply-or-explain" nature of Section 135 to a more "comply-or-get-punished" nature.[194]

The broad scope and applicability of India's CSR regulatory framework is a significant benefit. India's Companies Act specifies which companies must contribute profit to CSR activities based upon financial profits, and is the most significant piece of CSR legislation, as it not only mandates that 2% of statutorily regulated companies' profits be allocated towards CSR activities but also stipulates how this money must be spent.[195] Large Indian companies must now have a Corporate Social Responsibility Committee and disclose their CSR policies on their websites and annual reports.[196] The Companies Act also applies to all companies operating on land belonging to India, including foreign and domestic businesses, and is not limited by the size of such businesses. For example, the relevant provisions of the Companies Act 2013 also bind a corporation's foreign branch.[197]

A. Effectiveness of CSR Practices in India

Recently, numerous Indian companies have discovered ways to shirk their legal responsibility to contribute funds towards CSR activities.[198] Some companies have devised cunning methods that blend sustainability, social obligation, and business concepts to increase profit margins rather than only improve society's growth.[199] Hindustan Unilever ("HUL"), for example, invested significant money in raising awareness about sanitation and hygiene in underdeveloped rural areas.[200] Although this appears to be a CSR-compliant activity, it is merely a façade, since demand for its products would be increased

194 Nandha Kumar S A, *Corporate Social Responsibility: Fallacies in Its Effective Implementation in India*, 4 INT'L J. L. MGMT. & HUMANITIES 2362, 2364-65 (2021).

195 The Companies Act, 2013, schedule VII (India); Akanksha Jumde, *The Law on CSR in India: An Analysis of Its Compliance by Companies Through Corporate Disclosures*, 21 J. CORP. L. STUD. 253, 256 (2021).

196 The Companies Act, 2013 §§ 135(2), (4)(a) (India).

197 The Companies (Corporate Social Responsibility Policy) RULES, *supra* note 189, rule 3.

198 Jumde & Du Plessis, *supra* note 28, at 187.

199 *Id.* at 181-87.

200 Tina Edwin, *CSR: Help Others, Not Yourself*, BUS. TODAY (May 6. 2014, 3:48 PM), https://www.businesstoday.in/opinion/new-in-the-new-companies-act/story/csr-help-others-not-yourself-46615-2014-05-06 [https://perma.cc/2W8Z-85BC].

in those areas.[201] Most Indian companies like HUL, allocate their required CSR budget to their own organizations or foundations.[202] For example, Reliance Industries Limited conducts its CSR programs through the Reliance Foundation, ICICI Bank Limited through ICICI Foundation, Infosys Limited through Infosys Foundation, and Adani Enterprises Limited through the Adani Foundation.[203] Reliance Industries Ltd has come under scrutiny by the Ministry of Corporate Affairs for allegedly diverting approximately $24 billion worth of CSR funds into its own pre-existing businesses, including the Sir HN Reliance Foundation Hospital and Research Centre, Reliance University, and Dhirubhai Ambani Hospital.[204]

Such expenditures have not been revolutionary, however, because organizations under the indirect control of companies may fail to be transparent in spending the CSR funds.[205] This lack of transparency and misuse of the funds may also indicate that companies do not put enough effort into locating worthwhile projects or supporting grassroots-level NGOs.[206] Additionally, companies that urgently need

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201 *Id*.

202 *Top 100 Companies in India for CSR and Sustainability in 2022*, THE CSR J. (Jan. 30, 2023), https://thecsrjournal.in/top-companies-india-csr-sustainability-2022/.

203 *Id.* For a list of CSR foundations founded by large Indian corporations, see Ankit Pandey, *Large 20 CSR Foundations in India, CSR Activities Fund-Wise*, CSRBOX https://csrbox.org/Impact/description/Article_full_Large-20-CSR-Foundations-in-India,-CSR-Activities-Fund-wise_40 [https://perma.cc/LTH8-3SZB] (last visited May 18, 2024).

204 *Reliance May Have Diverted Rs 1.7k cr CSR Funds to Its Own Businesses*, PSU WATCH (June 19, 2019, 5:30 AM), https://psuwatch.com/corporatewatch/reliance-may-have-diverted-rs-1-7k-cr-csr-funds-to-its-own-businesses [https://perma.cc/U72X-VWC4]; Saloni Shukla & Sachin Dave, *Ministry of Corporate Affairs Probes Alleged Diversion of Funds by Reliance Group Companies*, ECON. TIMES (July 17, 2019, 9:01 AM), https://economictimes.indiatimes.com/industry/banking/finance/ministry-of-corporateaffairsprobes-alleged-diversion-of-funds-by-reliance-groupcompanies/articleshow/70253567.cms [https://perma.cc/A5PV-LJWA] (May 7, 2024).

205 Gomathy, *How Are Various Companies Spending CSR Money?*, FACTLY (Mar. 2, 2016) https://factly.in/how-are-various-companies-spending-csr-money/ [https://perma.cc/BBE4-UDBG].

206 *See* DEV. MONITORING & EVALUATION OFF., NAT'L INST. OF TRANSFORMING INDIA AAYOG, SOCIAL IMPACT ASSESSMENT OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA 52-53 (2021), https://dmeo.gov.in/sites/default/files/2021-11/Report_on_Social_Impact_Assessment_of_Corporate.pdf [https://perma.cc/9F3B-6NEL] (finding that two of the main challenges in CSR

to meet their CSR requirements often choose NGOs without conducting proper research, which can lead to unethical practices.[207] Recently, the Indian Central Bureau of Investigation ("CBI") filed a complaint against Delhi-based NGO Advantage India for misusing funds,[208] and Mumbai police uncovered a CSR funding scandal in which an unidentified person forged documents from Hexaware Technologies and approached NGOs and charitable funds across the country with a proposal for over ₹100 crore in CSR funds.[209] Moreover, many companies use charitable trusts to falsify their CSR expenditure, wherein the donated money is redirected back to the company.[210] The process involves the company issuing a check to a trust that operates in one of the activities specified by the government, such as healthcare, education, or environmental protection.[211] The trust deducts its commission

compliance in India are: (1) the lack in identification of capable implementing agencies and (2) suitable projects); *see also* PRIYA NAIK, ANUSHREE PAREKH, SIMONIL RUSTOMJI, MIKHAIL FIDEL D'SOUZA, AHONA GHOSH & RACHEL ANEESHA RAO, TRANSFORMING INDIA: THE CSR OPPORTUNITY 12 (2016), https://www.rockefellerfoundation.org/wp-content/uploads/Tranforming-India-The-CSR-Opportunity-August-2016.pdf [https://perma.cc/D4VQ-4AG5] (finding that 26% of the companies liable for mandated CSR expenditure had a lack of information on organisations credible for implementing CSR programs).

207 *See, e.g.*, Rajesh Ahuja, *CBI Files FIR Against Corporate Lobbyist, NGO over Misuse of CSR Funds*, HINDUSTAN TIMES (Nov. 17, 2017), https://www.hindustantimes.com/india-news/cbi-files-fir-against-corporate-lobbyist-ngo-over-misuse-of-csr-funds/story-278i8W6UCK8l2hIdl8lr0M.html [https://perma.cc/37SS-RPK4].

208 *CBI Files Supplementary Charge Sheet Against Talwar over FCRA Violation*, HINDUSTAN TIMES (June 9, 2023, 12:41 AM), https://csrbox.org/Impact/description/Article_full_Large-20-CSR-Foundations-in-India,-CSR-Activities-Fund-wise_40 [https://perma.cc/EG7B-BK26].

209 Raina Assainar, *Police Uncover CSR Funding Scam: Accused Promised NGOs over ₹100 Crore in Name of IT Firm*, THE HINDU (May 2, 2019, 1:31 AM), https://www.thehindu.com/news/cities/mumbai/police-uncover-csr-funding-scam/article27006141.ece [https://perma.cc/YP7V-ETMS].

210 *See* DEV. MONITORING & EVALUATION OFF., NAT'L INST. OF TRANSFORMING INDIA AAYOG, *supra* note 206, at 18, 33 (showing that while 34% of the CSR amount reported in financial year 2014, 2015, 2017, and 2018 was spent directly by the companies and 10% was spent by the trusts/societies set up by the companies, CSR expenditure through "other agencies" increased from 25% in 2014-2015 to 52% in 2017-2018).

211 Dinesh Narayanan, *How Indian Companies Are Misusing Public Trusts to Launder Their CSR Spending*, THE ECON. TIMES (Oct. 21, 2015), https://economictimes.indiatimes.com/news/economy/finance/how-indian-

before returning the money to the company, its directors, or promoters in cash, thereby converting white money into black money.[212] This detrimentally impacts the economy, as politicians and wealthy businesspeople often set up these trusts to evade accountability for unreported CSR funds.[213] Although the money enters these trusts through legal banking channels, it returns to the company in cash.[214] While the situation is already alarming, companies directly implemented 35% of CSR expenditure in 2016-2017 and 37% of CSR expenditure in 2017-2018.[215]

Many Indian companies provide funding from their CSR funds for major projects initiated by the political party in power, allowing the government to spend beyond its budget.[216] In doing so, companies aim to ensure that these companies receive the goodwill of the ruling political party.[217] This exchange of favors between wealthy business leaders and government often results in the misuse of CSR funds. Goodera, a CSR sustainability management platform, analyzed a report that shows a significant increase in spending from ₹46.51 crore in 2016 to ₹155.78 crore in 2017 for implementing political programs.[218] This increase was caused in large part by five major public sector undertakings ("PSUs"), namely ONGC, HPCL, BPCL, IOCL, and Oil India Limited, which collectively donated ₹146.83 crore towards the construction of the Statue of Unity in Gujarat, which is a flagship project of the Bharatiya Janata Party ("BJP").[219] These funds

companies-are-misusing-public-trusts-to-launder-their-csr-spending/articleshow/49474584.cms [https://perma.cc/J5GT-NUF2].

212 *Id.*

213 *Id.*

214 *Id.*

215 INDIA MINISTRY OF CORP. AFFS., *supra* note 180, at 36 (as opposed to doing so via trusts/societies established by the companies themselves or by the government, for example).

216 *See* DEV. MONITORING AND EVALUATION OFF., NAT'L INST. OF TRANSFORMING INDIA AAYOG, *supra* note 206, at 37 (showing that CSR expenditure by government Schemes and Funds raised from ₹625 crore in 2014-2015 to ₹1,110 crore in 2018-2019).

217 Ellie Featherston, *Section 135: How Is India's Mandatory CSR Spending Working Out?*, CEO MAG. (Feb. 24, 2020, 7:41 AM), https://www.theceomagazine.com/business/philanthropy/is-indias-mandatory-csr-working-out/ [https://perma.cc/3KAM-DSU2].

218 Pushpa Sundar, *Using CSR Funds for Political Gain*, THE WIRE (Dec. 22, 2018), https://thewire.in/business/modi-government-csr-political-gain [https://perma.cc/8FTA-PEUH].

219 *Id.*

were allocated for CSR purposes under the preservation of the national heritage category.[220] Moreover, fourteen other companies from Gujarat also made CSR donations towards this project.[221] Furthermore, public sector companies have been found to spend a significant portion of their CSR funds on politically motivated government projects. In 2017-2018, many of these companies allocated at least 30%-60% of their CSR fund towards initiatives such as the Swachh Bharat Abhiyan, Make in India, and Skills India Campaign.[222]

The rise of allocating CSR funds towards animal welfare, particularly cow protection, is another example of improper use of this fund.[223] According to data from the PRIME Database, forty-one listed companies have made a total of seventy-three donations towards cow-related activities and the establishment and management of Gaushalas (protective shelters for stray cows) between 2015 and 2018.[224] Companies like Genus Power Infrastructure and Paisalo Digital have allocated approximately ₹19.5 crore towards the well-being and protection of cows.[225] Although Schedule VII of the Companies Act 2013 permits the use of CSR funds for animal welfare, it does not explicitly mention cow protection, which is often used as a loophole to bypass CSR regulations.[226] The Companies Act 2013 mandates that companies' CSR activities align with the subjects listed in Schedule VII.[227] While the Schedule covers a broad range of topics and activities, it is important not to overlook the primary objective of the provision. When companies prioritize the protection of cows and other animals

220 *Id.*; *see also* Joe C. Mathew, *Oil PSUs ONGC, IOC and Others Made to Pay for Rs 3000 Crore Sardar Patel Statue*, BUS. TODAY (Sept. 18, 2018, 8:08 AM), https://www.businesstoday.in/latest/economy-politics/story/sardar-patel-statue-oil-psus-ongc-ioc-cag-3000-crore-csr-109470-2018-08-10 [https://perma.cc/T5RH-AMAF].

221 Sundar, *supra* note 218.

222 Jumde & Du Plessis, *supra* note 28, at 187.

223 Sundar, *supra* note 218.

224 Sachin P Mampatta & Krishna Kant, *Holy Cow! Now Even India Inc Spends Money on Them*, REDIFF.COM (NOV. 22, 2018, 8:40 AM), https://www.rediff.com/money/special/holy-cow-now-even-india-inc-spends-money-on-them/20181122.htm [perma.cc/2QX4-2WTB].

225 Sundar, *supra* note 218.

226 The Companies Act, § 135(3), sch VII (India).

227 *Id.*

over more pressing societal issues,[228] they align their actions with political interests, thus disregarding the Act's true purpose.

Most importantly, India's mandatory approach to CSR regulation has made a limited impact on corporate commitments to improving social conditions through CSR projects. As a result, Indian companies still utilize their CSR funds in limited geographical and thematic areas.[229] Bihar, Chhattisgarh, Madhya Pradesh, and Uttar Pradesh have the highest number of "backward districts" in India but have only received 9% of the total CSR funds.[230] In contrast, Maharashtra, Karnataka, Andhra Pradesh, Gujarat, Tamil Nadu, and Delhi have only around 11% of such districts, but have received around 40% of the total CSR funds for the years 2014-15 to 2017-18.[231] Jumde and Plessis assessed the annual reports of 200 Indian companies in 2017-2018 and found that "none of the companies have identified support for the elderly and aged population, orphans, measures for the benefit of the armed forces veterans, contributions for technology incubators in government approved academic institutions; eradication of malnutrition, infant mortality rates, setting up of public libraries and slum development as focus areas for their CSR initiatives."[232] In other words, the companies they assessed did not focus on broader social and environmental issues for spending their CSR funds. One of the explanations for companies focused on limited thematic areas for CSR spending would be their aim to get more result-oriented visibility and tax rebates from the government.[233]

The gap between the aims of the highlighted CSR projects and the emphasized goals of large Indian companies is wide. For instance, the ways Coca-Cola India contributed to eradicating malnutrition in India raised questions about its commitment to this cause. Coca-Cola India asserts in its sustainability reports that it has contributed to the national drive to achieve a "Kuposhan Mukt Bharat" (malnutrition-

228 Avantika Rai, *Failure of CSR in India*, TAXGURU (Oct. 11, 2020), https://taxguru.in/company-law/failure-csr-india.html [https://perma.cc/2AFC-VMGB].

229 *See* Abhishek Gawande & Atul Arun Pathak, *Uncovering the Geographical Skew in CSR Spending in India and Opportunities for Impactful Allocations*, 34 DEV. PRAC. 370, 371 (2024).

230 INDIA MINISTRY OF CORP. AFFS., *supra* note 180, at 45.

231 *Id.*

232 Jumde & Du Plessis, *supra* note 28, at 183.

233 *Id.* at 181-82.

free India)[234] and released two new products to achieve this objective, including "Minute Maid Nutriforce" and "Minute Maid Vita Punch," which the company claims deliver "daily essential nutrition requirements."[235] According to the Access to Nutrition Initiative ("ANI"), Coca-Cola India does not have a Nutrient Profiling System in place to determine which of its products are healthy.[236] In the India Spotlight Index 2020, the company's products were given a score of 3.5 out of 10 by ANI.[237] The ANI has suggested that Coca-Cola India should work towards improving the overall nutrition quality of its product portfolio or shift its marketing efforts towards selling healthier products.[238] Additionally, the company should enhance transparency in its engagements with relevant stakeholders, particularly those affecting its nutrition strategies in India.[239]

Widespread starvation can be caused by escalating food prices and declining livelihoods, for which Coca-Cola India, which monopolizes numerous farm products and depletes land resources, is partly responsible.[240] Coca-Cola India states that it is pursuing water-sustainable operations by employing the reduce-reuse-replenish strategy and assisting local communities.[241] This is yet to happen in reality, however. Instead, several community campaigns have been launched against the company's actions, which imperil vital resources.[242] The

234 COCA-COLA INDIA, CSR POLICY 2022, at 2 (2022), https://www.coca-cola.com/content/dam/onexp/in/en/legal/privacy-policy/pdf/CCIPL%20CSR%20Policy%202022%20-%20%20Final%2024%2008%202022.pdf [https://perma.cc/NL7E-M8YY].

235 *Coca-Cola India Launches Two Immunity-Boosting Beverages*, THE NEWS MINUTE (Aug. 5, 2020, 6:20 AM), https://www.thenewsminute.com/money/coca-cola-india-launches-two-immunity-boosting-beverages-130090 [https://perma.cc/4WEE-LMM7].

236 *India Spotlight Index 2020: Coca-Cola India*, ACCESS TO NUTRITION INITIATIVE, https://accesstonutrition.org/index/india-spotlight-2020/score-cards/coca-cola-india/ [https://perma.cc/3NBS-WM9N] (last visited May 18, 2024).

237 *Id.*

238 *Id.*

239 *Id.*

240 JOHN MADELEY, BIG BUSINESS, POOR PEOPLES: HOW TRANSNATIONAL CORPORATIONS DAMAGE THE WORLD'S POOR 60 (2008).

241 *Coca-Cola Unveils 2030 Water Security Strategy*, THE COCA-COLA CO. (Mar. 22, 2021), https://www.coca-colacompany.com/media-center/2030-water-security-strategy [https://perma.cc/GR5N-MT9B].

242 *See* Gavin Raders, *Combating the Privatization of Life in a Neo-Liberal Regime: The Fight for Water Democracies in India*, BERKELEY UNDERGRADUATE J., 2009, at 1, 11-19.

key worry of such campaigns is how Coca-Cola's plants contribute to the deterioration of precipitation and water resources in the regions surrounding their facilities.[243]

Coca-Cola India developed a bottling factory in Kaladera, a semi-arid, destitute village in Rajasthan, where it now operates. Previously, farmers had learned to save water and plant crops that could thrive in these conditions. After the establishment of the plant, however, Coca-Cola began to consume most of the water, leaving insufficient quantities for agricultural practices and resulting in loss of livelihood for the community.[244] The company attempts to conceal this fact in its sustainability report by stating that the company's water consumption accounts for only 0.0225% of the nation's industrial water consumption.[245] However, for each one-liter bottle of its product, Coca-Cola used at least 1.81 liters of water, while nearly 65% of India's reservoirs have been running dry since 2019.[246] This company has been one of the world's top plastic polluters for three consecutive years.[247] Plastic bottles and labels make up a significant portion of the company's waste, but there are no plans to develop alternatives because Coca-Cola believes the lightweight design is an attractive feature for Indian

243 Jonathan Hills & Richard Welford, *Case Study: Coca-Cola and Water in India*, 12 CORP. SOC. RESP. & ENV'T MGMT. 168, 169 (2005)

244 *Id.*; *see also* Vikrant Shirodkar, Eshani Beddewela & Ulf Henning Richter, *Firm-Level Determinants of Political CSR in Emerging Economies: Evidence from India*, 148 J. BUS. ETHICS 673, 677 (2018); Ritu Agarwal, *CSR to Be or Not Be*, 8 GLOB. J. ENTER. INFO. SYS. 21, 24 (2016); Earth Talk, *Coca-Cola Charged with Groundwater Depletion and Pollution in India*, THOUGHTCO., https://www.thoughtco.com/coca-cola-groundwater-depletion-in-india-1204204 [https://perma.cc/3YC5-2QP2] (July 16, 2019).

245 Gangadhar S. Patil, *Coca-Cola Nears Biggest Showdown with India Activists*, NIKKEI ASIA (Apr. 12, 2017, 12:45 AM), https://asia.nikkei.com/Politics/Coca-Cola-nears-biggest-showdown-with-India-activists [https://perma.cc/2QFL-6U9P].

246 *Water Withdrawal by Coca-Cola in 2021*, GLOBALDATA (Sept. 2022), https://www.globaldata.com/data-insights/consumer/water-withdrawal-by-coca-cola-2095647/ [https://perma.cc/7PD2-L4VN]; *Water Shortages in India*, NASA EARTH OBSERVATORY, https://earthobservatory.nasa.gov/images/145242/water-shortages-in-india [https://perma.cc/SHN5-ACLG] (last visited May 18, 2024).

247 *See The Coca-Cola Company and PepsiCo Named Top Plastic Polluters for the Fourth Year in a Row*, BREAKFREEFROMPLASTIC (Oct. 25, 2021), https://www.breakfreefromplastic.org/2021/10/25/the-coca-cola-company-and-pepsico-named-top-plastic-polluters-for-the-fourth-year-in-a-row/ [https://perma.cc/96UT-D5KT].

consumers.[248] In fact, due to the recent shift towards healthier options among Indians, Coca-Cola has begun developing smaller bottles for perceived portion control, simultaneously increasing waste and sales and profits.[249] Coca-Cola has prioritized bottle recycling and launched CSR efforts to encourage bottle reuse,[250] but microtears can allow chemicals such as polyethene terephthalate to seep into the liquid, rendering bottle re-use hazardous.[251]

VI. CONCLUSION

Although CSR rules in Australia and India differ significantly, both governments recognize the enormous power of corporations. Each country has its own set of advantages and disadvantages in regulating companies' social responsibility performances. As a more developed country, Australia does not need to rely largely on large companies' contributions to improve its communities.[252] Although accepting funds for community improvement activities is admirable, Australia decided not to legally mandate CSR.[253] India, on the other hand, requires a certain group of these companies to contribute a portion of their profits to the betterment of their local communities.[254]

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248 *See* THE COCA-COLA CO., 2020 WORLD WITHOUT WASTE REPORT 9 (2020), https://www.coca-colacompany.com/content/dam/company/us/en/reports/coca-cola-world-without-waste-report-2020.pdf [https://perma.cc/J5F3-T9JM].

249 Robin Larocque, *Corporate Social Responsibility: An Anthropological Approach to Understanding CSR as Global Governance*, 2 PATHWAYS 73, 79-80 (2021).

250 *See* THE COCA-COLA CO., 2022 BUSINESS & SUSTAINABILITY REPORT 36-42 (2022), https://www.coca-colacompany.com/content/dam/company/us/en/reports/coca-cola-business-sustainability-report-2022.pdf [https://perma.cc/B585-GPNR].

251 Lori M. King, *Is It Safe to Reuse Plastic Water Bottles?*, WEBMD (Jan. 23, 2024), https://www.webmd.com/a-to-z-guides/is-it-safe-to-reuse-plastic-water-bottles [https://perma.cc/93QL-MPUP]; Earth Talk, *This Is Why You Should Never Reuse Single Use Bottles*, BOTL (Feb. 5, 2022), https://www.onegreenbottle.com/this-is-why-you-should-never-reuse-single-use-bottles/ [https://perma.cc/VWK6-Q7BC].

252 *See How the Government Funds Community Services*, CMTY. INDUS. GRP., https://communityindustrygroup.org.au/lessons/how-the-government-funds-community-services/ [https://perma.cc/8VNU-XHWF].

253 *See supra* Part IV.

254 *See supra* Part V.

India's CSR law is not entirely mandatory. Indian companies can avoid spending on social cause by providing valid reasons.[255] The law covers a wide range of issue areas, making it ambiguous and allowing companies to strategically choose which social needs to address and which ones to leave unaddressed.[256] As Umakanth Varottil identified, despite contributing to a rise in CSR spending between 2014 and 2016, it has "arguably failed to achieve the goals" set by the legislature.[257] Analyses of compliance between 2017 and 2019 also identified that reports on this requirement were insufficient or lacked information.[258] It is yet to set the CSR principles at the core of corporate decision-making. Instead, it has contributed to the gradual shift from the "private governance" of CSR towards the growing "government of self-regulation" of CSR.[259] This shift indicates the reassertion of states' rule-making power and political objectives in an area normally based on the capacity of the private ordering systems. While we are yet to see the outcome of this shift in CSR performance, debate has been ongoing regarding this shift's drawbacks for CSR objectives. Damien Krichewsky argues that such a shift might further institutionalize the private forms of governance in CSR regulation and might "end up transforming the state's regulatory power by promoting and legitimizing companies' control over the performance of business-relevant regulatory and social welfare redistributive functions."[260]

Both the Corporations and Markets Advisory Committee[261] and the Parliamentary Joint Committee on Corporations and Financial

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255 *See* Umakanth Varottil, *Analysing the CSR Spending Requirements Under Indian Company Law*, *in* GLOBALISATION OF CORPORATE SOCIAL RESPONSIBILITY AND ITS IMPACT ON CORPORATE GOVERNANCE 231 (Jean J. du Plessis, Umakanth Varottil & Jeroen Veldman 2018).

256 Krichewsky, *supra* note 30, at 541.

257 Varottil, *supra* note 255, at 233; *see also Large Indian Business Failing on Spending 2% on CSR*, INDIA CSR, https://indiacsr.in/large-indian-business-failing-on-spending-2-profit-on-csr/ [https://perma.cc/GLV5-HKTE] (last visited May 18, 2024); Panchali Guha, *Why with an Unenforced Policy? The Case of Mandated Corporate Social Responsibility in India*, 3 DESIGN & PRAC. 58 (2020).

258 Jumde, *supra* note 195, at 254.

259 Krichewsky, *supra* note 30, at 511.

260 *Id*.

261 CORPS. & MKTS. ADVISORY COMM., THE SOCIAL RESPONSIBILITY OF CORPORATIONS 77-79 (2006), https://takeovers.gov.au/sites/takeovers.gov.au/files/2021-04/corporations_report_dec_2006.pdf [https://perma.cc/F5GQ-MN5F].

Services ("PJCFS")[262] did not suggest modifications to Australian corporate law regarding CSR. The PJCFS stated that companies' desire to increase their shareholders' value would often encourage companies to consider stakeholders' interests.[263] Furthermore, it concluded that the current law allows companies to consider the interests of their non-shareholder stakeholders, and the long-term advantages would urge them to engage in greater social responsibility.[264] Nonetheless, companies and their governing bodies do not operate in a values-free zone in Australia.[265] Their actions are constantly being evaluated and criticized. The opinions and expectations of investors, employees, customers, local communities and other interest groups influence how companies conduct their businesses and present themselves in the market of opinions, preferences and communication.[266] Alongside the presence of an independent media,[267] a widespread CSR reporting practice is another strong driver of CSR in this country.[268] Opponents of CSR reporting, however, argue that, in its current form, such reporting is simply a public relations technique that businesses use to make their operations appear more ethical than they actually are.[269] They

262 PARLIAMENTARY JOINT COMM. ON CORPS. & FIN. SERVS., *supra* note 140, at xix.

263 *Id.* at 59. Radu Mares believes that Corporate Social Responsibility (CSR) consists of three aspects: environmental, social, and economic. He argues that developed countries already have sufficient legal frameworks to address these issues, making it unnecessary to impose additional legal compliance on companies. For his discussion on this matter, see Radu Mares, *Global Corporate Social Responsibility, Human Rights and Law: An Interactive Regulatory Perspective on the Voluntary-Mandatory Dichotomy*, 1 TRANSNAT'L LEGAL THEORY 221, 231-32 (2010).

264 Justine Nolan, *Corporate Responsibility in Australia: Rhetoric or Reality?*, 12 AUSTRALIAN J. HUM. RTS. 63, 77 (2007).

265 CORPS. & MKTS. ADVISORY COMM., *supra* note 261, at iv.

266 *Id.*

267 Sadok El Ghoul, Omrane Guedhami, Robert Nash & Ajay Patel, *New Evidence on the Role of the Media in Corporate Social Responsibility*, 154 J. BUS. ETHICS 1051, 1054-55 (2019).

268 *See* Urša Golob & Jennifer L. Bartlett, *Communicating About Corporate Social Responsibility: A Comparative Study of CSR Reporting in Australia and Slovenia*, 33 PUB. RELS. REV. 1, 1-2 (2007).

269 *See* Jeffrey R Cohen & Roger Simnett, *CSR and Assurance Services: A Research Agenda*, 34 AUDITING: A JOURNAL OF PRACTICE & THEORY 59, 65 (2015); Sarah Davies, *Corporate Social Responsibility (CSR) – More than the Financial Bottom Line*, MONDAQ (Oct. 27, 2014), https://www.mondaq.com/australia/corporate-governance/349792/corporate-social-responsibility-csr—-more-than-the-financial-bottom-line [https://perma.cc/P2KZ-B4FC]; Stephanie Schleimer **&** John

consider such reporting "opportunistic, 'green washing', implausible, cosmetic, lacking in stakeholder inclusivity, lacking in 'authentic effort' and failing to meet users' expectations."[270]

While several key international guidelines may be used to guide companies' CSR reporting, such guidelines are voluntary and have no repercussions if they are not followed.[271] This level of corporate discretion prevents the implementation of accurate and reliable CSR reporting systems.[272] This is especially true where the companies provide quality less reports, that is the information in the report is irrelevant, incomparable, hard to verify, unclear, or biased.[273] With this lack of quality, CSR reports can be symbolic in form and can add little value to assist external stakeholders' decision making.[274] In response to this concern, a number of proposals for regulating CSR reporting have been made in Australia in the past few years. Since 2008, the Australian Council of Superannuation Investors has consistently called for listed companies to disclose their CSR performance

Rice, *Australian Corporate Social Responsibility Reports Are Little Better than Window Dressing*, THE CONVERSATION (Oct. 3, 2016, 7:42 PM), https://theconversation.com/australian-corporate-social-responsibility-reports-are-little-better-than-window-dressing-66037 [https://perma.cc/F5MS-XLZQ].

270 Habib Zaman Khan, Sudipta Bose, Abu Taher Mollik & Harun Harun, *"Green Washing" or "Authentic Effort"? An Empirical Investigation of the Quality of Sustainability Reporting by Banks*, 34 ACCT. AUDITING & ACCOUNTABILITY J. 338, 339 (2021).

271 Disclosure Insight Action, Dow Jones Sustainability Indexes, Global Reporting Initiative, Global Real Estate Sustainability Benchmark, and Sustainability Accountability Standards Board are some of the voluntary frameworks for preparing sustainability reports of the companies. For details, see *The Top 5 Sustainability Reporting Frameworks You Should Know*, MEASURABL (Aug. 3, 2020), https://www.measurabl.com/the-top-five-sustainability-reporting-frameworks-you-should-know/ [https://perma.cc/L94F-YTER]; Hien Hoang & Ken T Trotman, *The Effect of CSR Assurance and Explicit Assessment on Investor Valuation Judgments*, 40 AUDITING: J. PRAC. & THEORY 19 (2021).

272 *See* Giovanna Michelon, Silvia Pilonato & Federica Ricceri, *CSR Reporting Practices and the Quality of Disclosure: An Empirical Analysis*, 33 CRITICAL PERSPS. ACCT. 59, 63 (2015).

273 *See* Jean-Noël Chauvey, Sophie Giordano-Spring, Charles H. Cho & Dennis M. Patten, *The Normativity and Legitimacy of CSR Disclosure: Evidence from France*, 130 J. BUS. ETHICS 789, 793 (2015).

274 Khan et al., supra note 270, at 339; Fang Gao, Yi Dong, Chenkai Ni & Renhui Fu, *Determinants and Economic Consequences of Non-Financial Disclosure Quality*, 25 EUR. ACCT. REV. 287, 290 (2016).

appropriately.[275] In its updated CSR reporting guidelines, ACSI recommends that CSR reports cover critical issues such as modern slavery, climate change, sexual harassment, and safety.[276] It has also encouraged companies to include material sustainability performance information as part of their annual reports because it is becoming increasingly critical to investor needs.[277]

The debate between voluntary and mandatory CSR remains multifaceted. While voluntary CSR allows companies to tailor their initiatives and demonstrate genuine commitment, it lacks uniformity and may lead to free-riding. On the other hand, mandatory CSR ensures consistent efforts, accountability, and a level playing field, but compliance costs and potential resistance are challenges. Striking the right balance—perhaps through a combination of both approaches—will be crucial for meaningfully regulating profit-driven corporate purposes.

275 Moving Forward on ESG: ACSI Governance Standards Updated, Australian Council Superannuation Invs. (Dec. 15, 2021), https://acsi.org.au/media-releases/moving-forward-on-esg-acsi-governance-standards-updated/ [https://perma.cc/H2D5-ARTH].

276 *Id.*

277 AUSTRALIAN SEC. & INV. COMM'N, REGULATORY GUIDE 247: EFFECTIVE DISCLOSURE IN AN OPERATING AND FINANCIAL REVIEW 20 (2013), https://download.asic.gov.au/media/5230063/rg247-published-12-august-2019.pdf [https://perma.cc/D22N-LHQA].