ILE

INTELLECTUAL PROPERTY AND CORPORATE LAW REVIEW

VOLUME 5 AND ISSUE 1 OF 2026

INSTITUTE OF LEGAL EDUCATION

ILE INTELLECTUAL PROPERTY AND CORPORATE LAW REVIEW

APIS – 3920 – 0008 | ISSN – 2583 – 6153

(Open Access Journal)

Journal's Home Page – https://ipclr.iledu.in/

Journal's Editorial Page - https://ipclr.iledu.in/editorial-board/

Volume 5 and Issue 1 (Access Full Issue on - https://ipclr.iledu.in/category/volume-5-and-issue-1-of-2026/)

Publisher

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Published by

Institute of Legal Education

https://iledu.in

UNDERSTANDING THE LEGAL LANDSCAPE OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA AND THE RAMIFICATIONS THEREOF WITH A SPECIAL FOCUS ON 'SLUM DEVELOPMENT'

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BEST CITATION - RASHI TANNA & KAVYA SHARMA, UNDERSTANDING THE LEGAL LANDSCAPE OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA AND THE RAMIFICATIONS THEREOF WITH A SPECIAL FOCUS ON 'SLUM DEVELOPMENT', *ILE INTELLECTUAL PROPERTY AND CORPORATE LAW REVIEW,* 5 (1) OF 2026, PG. 01-09, APIS – 3920 – 0008 | ISSN – 2583–6153. DOI - https://doi.org/10.65393/OWAC7564

Abstract

Corporate Social Responsibility (CSR), which in most countries is merely a social obligation, has gained legal recognition and compulsion in India for certain companies as prescribed in the Companies Act, 2013. Section 135 mandates eligible companies to allocate at least 2% of their average net profits towards CSR activities along with prescribing measures to be taken and provisions to be made to facilitate this allocation and transfer of funds. However, significant challenges persist in the CSR framework.

Through this research, we try to understand and analyze the existing statutes, laws, guidelines and other legal frameworks that govern allocation and distribution of CSR funds. We try to explore several loopholes, fallacies and shortcomings in the present laws. To further understand the extent of the implications of these loopholes on sectors of spending in detail, the slum development sector is taken as a case study. Data such as change in the amount of yearly spendings on slum development, change in these spendings in accordance to geographical locations etc. is taken into consideration in order to try and understand behavioral patterns observed in companies while allocating funds to CSR sectors. This paper examines potential solutions to mitigate the existing gaps within India's legal framework. These solutions involve policies and regulations that complement the current framework, enabling the resolution of these gaps without necessitating a complete overhaul of the system.

In conclusion, this research aims to provide a holistic understanding of the CSR framework in India, highlighting the challenges and inconsistencies that hinder its effective implementation. By examining the nuances of statutory requirements and behavioral patterns in CSR spending, particularly in the context of slum development, this paper seeks to propose actionable solutions that align with the existing legal structure. These recommendations are designed to enhance accountability, transparency, and impact in CSR initiatives, contributing to a more equitable and sustainable approach to corporate social responsibility in India.

1. Introduction

The concept of Corporate Social Responsibility (CSR) in India has become increasingly significant, with companies acknowledging their duty to contribute to society. CSR in India is governed by the Companies Act, 2013, which makes it not just a voluntary practice but a mandatory requirement.

Legal Framework of CSR in India:

a. Section 135 of the Companies Act, 2013: This section mandates that companies meeting certain financial criteria must allocate at least 2% of their average net profits from the previous three financial years to CSR activities. This provision applies to companies with a net worth of Rs. 500 crores or more, a turnover of Rs. 1000 crores or more, or a net profit of Rs. 5 crores or more during the immediately preceding financial year. This Section also mandates that companies must create a committee designated for CSR activities and must plan, promulgate, undertake and monitor all CSR initiatives. The CSR committee is to be formed within their Board of Directors, consisting of at least three members, including at least one independent director. However, if a company is not eligible to compulsorily appoint an independent director as per Section 149(4) of the Act, the CSR Committee can consist of two or more directors. All CSR activities should be in adherence with the CSR policy as set by the CSR committee. The CSR committee must also recommend the amount of money that shall be spent on CSR activities. The section also makes it mandatory for all eligible companies to create a special account for the purpose of CSR spendings and transfer funds allocated to it within a period of 30 days after the end of the third financial year. If a company fails to do so, reasons for the same must be mentioned along with reports of CSR spendings in accordance with Sec. 134 (o) of the act. If a company fails to adhere to these provisions, the company shall be liable to pay a fine of an amount twice the amount that should've been transferred to the CSR fund or the unspent amount in the CSR account, or of Rs. 1 crore, whichever is lesser and every officer liable for such default shall be charged with a fine of an amount equal to one-tenth of the that should've been transferred to the CSR fund or the unspent amount in the CSR account or Rs. 2 lakh whichever is lesser. [1]

b. Schedule VII of the Indian Companies Act, 2013: Schedule VII of The Indian Companies Act, 2013 prescribes sectors or activities the contribution to which will count as CSR for a particular company. While the list is not exhaustive, it is prescriptive. Any activity that is directly related to the company's business activity in the normal course of business shall not count as CSR. [2]

c. Section 198 of the Indian Companies Act, 2013: The computation of net profit for CSR is as per Section 198 of the Companies Act, 2013. Section 198 provides that while computing the net profits of a company, a credit should be given for the subsidies and bounties received from any government or public authority constituted or authorized on this behalf. [3]

d. SEBI Mandate: The Securities and Exchange Board of India provides an entire detailed format for companies that are listed on stock exchanges for creation of a Business Responsibility and Sustainability Report (BRSR) detailing their CSR activities. [4] The format mandates companies to disclose in details like Grievances on any of the principles under the National Guidelines on Responsible Business Conduct, policies of management, government, foresight etc. Processes.

e. MCA Guidelines: The Ministry of Corporate Affairs (MCA) has issued guidelines and circulars to enhance the Corporate Social Responsibility (CSR) framework. One such example is General Circular No. 14/2021 [5], which stipulates that if a company fails to comply with provisions other than Section 135(5) or 135(6) of the Companies Act, penalties under Section 134(8) or Section 450 will be applicable. According to Section 134(8), a company in default may be subject to a penalty of ₹3 lakh, and each responsible officer may be fined

[1] The Companies Act, 2013, § No. 18, Acts of Parliament, 2013 (India)

[2] Indian Companies Act, Schedule VII, No. 18, Acts of Parliament, 2013 (India).

[3] Indian Companies Act, § 198, No. 18, Acts of Parliament, 2013 (India).

[4] Securities and Exchange Board of India, Business Responsibility & Sustainability Reporting Format by Listed Entities, SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (Issued on May 10, 2021)

[5] Ministry of Corporate Affairs, FAQs on Corporate Social Responsibility, General Circular No. 14/2021 (Issued on August 25, 2021)

₹50,000. Additionally, under Section 450, if there is a breach of any other provisions without specific penalties, the fines may reach up to ₹10,000, with an additional ₹1,000 for each day the default continues, subject to a maximum of ₹2 lakh for the company and ₹50,000 for the officers involved.

2. Hypothesis

Companies strategically leverage Corporate Social Responsibility (CSR) initiatives not solely to contribute to societal and environmental well-being but also to enhance their own profitability, reputation, and market competitiveness. Specifically, this research hypothesizes that CSR activities are increasingly being used as tools to build brand loyalty, attract and retain employees, and achieve favourable regulatory and stakeholder relationships, thereby benefiting the company's overall performance and value.

3. Literature Review

The concept of Corporate Social Responsibility (CSR) has gained significant traction in India, particularly following the enactment of the Companies Act, 2013, which mandates certain companies to allocate 2% of their net profits towards CSR activities.

The paper titled 'Corporate Social Responsibility in India: The Need of the Hour' (2010) by Chaitra R. Beerannavar provides a comprehensive examination of the evolution and current state of Corporate Social Responsibility (CSR) in India.[6] The author emphasizes that CSR has transitioned from a philanthropic approach to a more integrated model that considers the interests of various stakeholders, including the community, environment, and economy. This shift is particularly relevant in the context of India's rapid economic growth, where socio-economic challenges such as poverty, illiteracy, and inadequate healthcare persist. The paper highlights the importance of CSR in fostering sustainable development and building trust between corporations and society.

The paper 'Corporate Social Responsibility in India: Issues and Challenges' by Samantara and Dhawan (2020)[7] provides a comprehensive analysis of CSR practices in India, emphasizing the legal framework that positions India as a leader in making CSR a statutory requirement. The authors argue that CSR extends beyond mere philanthropy, advocating for a holistic approach that integrates social, environmental, and economic objectives. This perspective aligns with the broader understanding of CSR as a multi-dimensional concept that is essential for sustainable business practices. In their research, Samantara and Dhawan identify various drivers influencing CSR engagement among Indian companies, including cost management, tax incentives, customer expectations, and government pressure.

The paper 'Corporate Social Responsibility in India: A Review of the Literature' by Dr. R. S. Kaur and Dr. S. K. Sharma (2023) provides a comprehensive overview of the existing literature on Corporate Social Responsibility (CSR) in India, highlighting its evolution, significance, and the challenges faced in its implementation.[8] Kaur and Sharma discuss the various dimensions of CSR, including economic, social, and environmental responsibilities, and stress the importance of aligning corporate strategies with the broader goals of sustainable development. They argue that CSR initiatives can play a crucial role in addressing pressing social issues, particularly in underserved areas such as slums, where poverty, lack of education, and inadequate healthcare are prevalent. The authors highlight that effective CSR can contribute to improving the quality of life for slum dwellers and fostering community development. However, the paper also identifies several challenges that hinder the effective implementation of CSR initiatives in India. Kaur

[6] Santosh Kumar Tripathi Et. Al., *Corporate Social Responsibility in India: A Review of Corporate Contributions to Sustainable Development Goals*, Educational Administration Theory and Practice journal 30 (2024).

[7] Samantara Et. Al., *Corporate Social Responsibility in India: Issues and Challenges*, 11, IIMS JOMS, 91 (2020)

[8] Raut Nileshkumar Kailashbhai, *Corporate Social Responsibility in India– Current Scenario and Challenges*, EPRA International Journal of Environmental Economics, Commerce and Educational Management, 10, 66 (2023)

and Sharma emphasize the need for companies to move beyond mere compliance with legal requirements and to genuinely understand and address the needs of the communities they serve.

Research gap:

While existing literature provides valuable insights into how CSR operates in India and highlights the loopholes arising from state machinery and the country's socio-legal realities, a significant research void persists. None of these works delve into the critical sector of 'slum development' as a case study, leaving a substantial gap in understanding the intersection between theoretical inadequacies in CSR laws and their practical exploitation. This paper aims to address this glaring gap. By focusing on the slum development sector, we demonstrate how companies potentially manipulate CSR laws for self-serving purposes. The sector provides concrete evidence that transforms abstract theoretical loopholes into tangible instances of abuse. Unlike prior studies that merely acknowledge the existence of such gaps, this paper substantiates their presence through a detailed, real-world case study, thereby making a crucial contribution to the discourse on CSR in India.

4. Discussion

4.1 Loopholes in CSR:

Corporate Social Responsibility (CSR) initiatives often encounter significant loopholes that hinder their effectiveness despite the growing emphasis on environmental, social, and governance (ESG) factors. A key challenge is the limited integration of CSR across value chains. Many organizations fail to comprehensively engage subsidiaries, suppliers, and subcontractors, reducing the overall impact of their efforts. Let's take an example of Kering tracks. "While Kering tracks environmental impacts with its Environmental Profit & Loss (EP&L) methodology, smaller companies often lack the tools to conduct similar analyses. Additionally, a focus on meeting regulatory requirements instead of proactively addressing societal and environmental concerns is widespread, with research indicating that only 39% of companies are actively pursuing beyond-compliance CSR goals."[9] Transparency and stakeholder engagement also remain critical challenges; although companies like SNCF have open data portals to share CSR progress, smaller firms frequently struggle to provide accessible and real-time information to stakeholders.

Employee disengagement is another significant issue, with studies showing that 96% of employees expect their employers to lead in sustainable development, yet many organizations fail to involve them effectively.[10] For example, MAIF empowers its workforce with self-service data platforms, but most organizations lack similar initiatives, leaving employees uninspired to contribute to CSR goals. Communication of CSR impact is equally inadequate, as traditional static reporting fails to meet the growing demand for transparent and actionable insights. Furthermore, while 93% of employees are more likely to stay with companies making a positive societal impact, the lack of visible and engaging CSR data reduces trust and engagement among stakeholders.[11] Finally, viewing CSR solely as a compliance or reputational safeguard undermines its potential for driving innovation and growth. By adopting transparent data platforms, fostering stakeholder collaboration, and embedding CSR into core strategies, businesses can overcome these loopholes and build more resilient, purpose-driven organizations.[12]

4.2 Capitalism for the Elite and Its Impact on CSR

Global capitalism fosters inequality, as the rich secure privileges that perpetuate their

[9] Lauréline Saux, *Impact, sustainability, and CSR: Using data to build the organizations of the future*, OPENDATASOFT, (Dec. 25, 2024, 11:23 p.m.) https://www.opendatasoft.com/en/blog/impact-sustainability-and-csr-using-data-to-build-the-organizations-of-the-future/
[10] *Id.*
[11] *Id.*
[12] *Id.*

dominance across generations, a phenomenon Markovits terms "snowball inequality." This cycle of elite education, high-skilled jobs, and generational wealth widens economic disparity and reinforces discrimination. While scholars like Reich advocate for a more inclusive capitalism, many feel that the current system benefits only the elite.

Elitist capitalism also produces elitist CSR (Corporate Social Responsibility), often designed by management or exclusive groups without involving broader stakeholders like employees or local communities. Such initiatives are viewed sceptically, perceived as insincere, or as attempts to conceal corporate shortcomings. Slick CSR reports and cherry-picked success stories further reinforce this mistrust, as they often focus on elite-defined "best practices" instead of addressing diverse stakeholder needs.

Critics argue that CSR, in many cases, is a strategic capitalist move disguised as a social effort. Companies often prioritize CSR initiatives that align with their profit motives, investing in areas where they can extract benefits under the guise of social responsibility. For example, businesses frequently channel CSR funds into projects that enhance their market presence, improve public perception, or directly support operations rather than addressing genuine societal issues. This undermines the original purpose of CSR, which was to give back to the community meaningfully.

Additionally, companies often engage in "window dressing," presenting an embellished or misleading picture of their CSR efforts. This tactic not only distorts the true impact of CSR but also shields companies from regulatory scrutiny, as these practices are rarely flagged or acted upon by authorities. The lack of accountability and oversight enables businesses to continue using CSR as a profit-driven strategy rather than a tool for societal improvement. Addressing this misuse requires stricter regulation, increased transparency, and a shift in focus toward genuine, stakeholder-driven initiatives to ensure CSR fulfils its intended purpose of contributing to the greater good.

To gain a clearer understanding of how these loopholes enable companies to exploit and navigate around existing CSR laws, the sector of 'Slum Development' has been chosen as a detailed case study.

4.3 Slum development:

It's safe to say that slum development is an important part of not only the economy but also the society that we are a part of. Slums can cause economic as well as social problems. While not dwelling too much into the effects, implications and causes of slums, this paper aims to understand firstly, why slum development is one of the causes which is least invested in as a CSR sector by companies, and secondly, within this sector, why is there so much disparity in the sums being spent into each state every year.

4.3.1 Lack of Spendings

The Indian Government recognizes Slum Area Development as a national priority area. [13] Thus, one's natural assumption would be that it is also a sector of CSR in which companies spend quite a few of their CSR funds. However, the contrary is actually true. Out of a total spending of 29986.92 Crores, a mere sum of Rs. 93.84 Crores was spent on Slum Development in the Financial Year 2022-23.[14] This means only 0.31% of the total funds were spent on Slum Development as shown in *Figure 1.* A similar trend was observed in previous financial years with Rs. 58.29 crores out of Rs. 26579.78 accounting to only 0.002% of the entire amount of CSR spent in the country.[15] Such a small amount being spent on such a crucial cause may be a cause of concern for India.

[13] Team Urban Update, *HCL Technologies wins CSR Award for slum development programme*, URBANUPDATE, (Dec. 25, 2024 11:30 p.m.) https://urbanupdate.in/hcl-technologies-wins-csr-award-for-slum-development-programme/#:~:text=The%20Government%20of%20India%20identifies,and%20working%20children%2C%20full%20support.

[14] Ministry of Corporate Affairs, *National CSR Portal* https://www.csr.gov.in/content/csr/global/master/home/home.html

[15] *Id.*

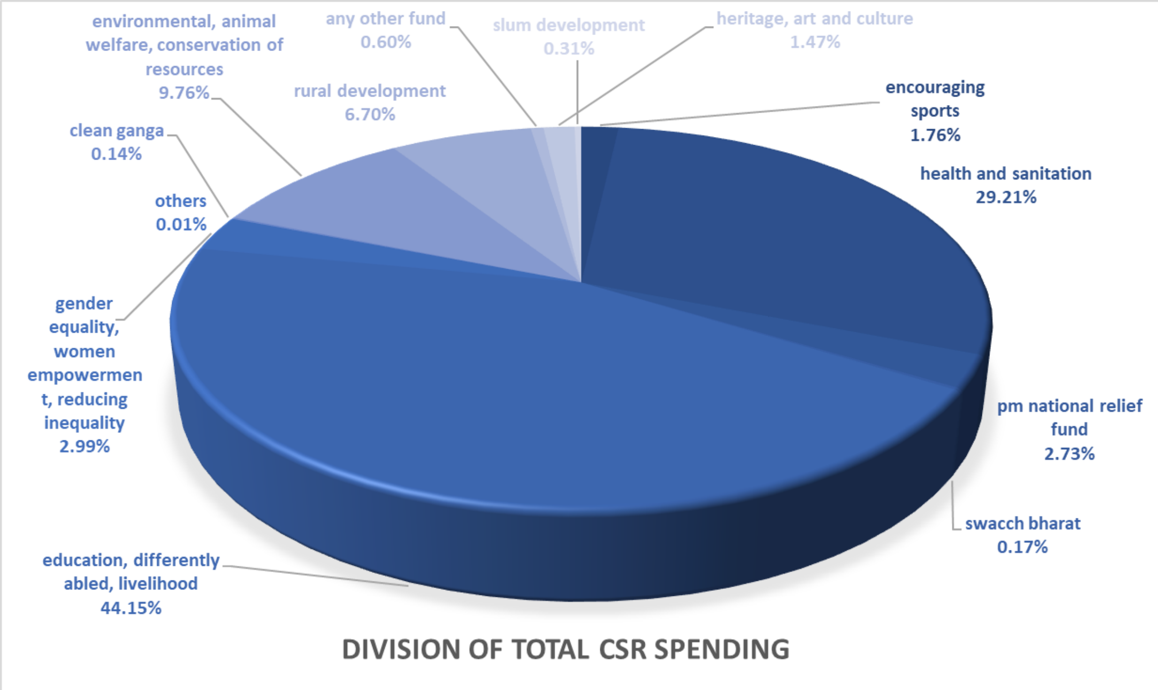

Figure 1: Division of Total CSR Spendings

The reason corporations and companies cite for this trivial amount of spending on the cause include:

1. The issue of slums and their development is a complex one and thus, needs to be handled with utmost care and failing that would result in catastrophic socio-political crises.[16]
2. "Slums are difficult areas to work in. The social and political environment is quite complex. For instance, unlike villages which have a 'panchayat system' to regulate the area, slums have no system in place." [17] Thus, there are no representative voices which would mean that agreement of each and every person residing in the slum has to be taken on a personal basis which makes the task pretty difficult. "To make matters worse, slums in bigger cities may have political affiliations which further discourage companies from engaging with them."[18]
3. Companies usually implement social development programs on recommendations by the state government.[19]
4. While many companies do have initiatives and spending for slum areas, they may be specialized and thus are categorized under other categories like education, financial literacy etc.[20]

However, the authors feel that there are a few, deeply rooted reasons for this that are more probable than the others.

__4.3.1.1 Complexity in the environment__

The first reason for companies not spending on slum development would be the fact that it is an overly complicated environment. As mentioned earlier, it does not have any official regulating body which makes it quite difficult for any decision to be taken regarding the slum. These slums are also often tied to a particular political party making things more complicated, which deters a company from involving themselves in it. Also, more often than not, real estate companies take on Slum development

[16] Haris Zagar, *Slums find few takers for CSR programmes,* MINT, (Dec. 25 11:48 p.m.) https://www.livemint.com/Companies/Y23WWONfnpswZ8xy7r0twL/Slums-absent-from-companies-CSR-programmes.html
[17] Id.
[18] Id.
[19] Id.
[20] Id.

projects, where they takeover an entire slum plot, relocating the slum dwellers to another building(s) and use the plot of the slum for developing projects for sale. This process is called resettlement. "Most city Engineers prefer the option of resettlement of slums as to in-situ upgrading of slums while addressing the issue of slums; despite the fact shown by previous studies that there is a decreased per capita income and asset holding in resettlement of slum population, leaving them poorer and more vulnerable. The earlier process is more economically viable as well as convenient as compared to the latter option"[21] These real estate companies don't list it under CSR, rather their normal course of business so as to get a tax exemption. Thus, even if a company were be interested, this complex of an environment makes it considerably difficult for them in the fear of dampening relations with the affiliated political party which would only mean more obstacles in their path.

4.3.1.2 Tendency of companies to spend on a sector that causes profit in the future

Secondly, companies spend on CSR sectors that could be a cause for profit in the future. Research suggests that "companies allocated their CSR expenditure on activities related to their core business area," [22] and, "some companies indulge in strategic CSR activities, which yield substantial business-related benefits to companies in the long run."[23] This would easily explain the lack of spendings. Slum development is hardly a core business area for any big company, and neither will spending on it cause any future business-related benefits for those companies. As an extension of this, companies also use CSR as merely a marketing tool. "While many organizations undertake their social responsibility as charity, many undertake it to fulfil their marketing needs or to give a positive disposition to their brands." [24] Thus, companies tend to spend only on causes that are more well known by the masses, in order to get noticed by them which then improves their goodwill, leading to an increase in sales. This would also explain why certain causes, like slum development, get sidelined while other causes like Covid-19 relief fund during 2020-22 were spent on graciously. While such practices are completely legal, they're still an ethical question mark as they defeat the entire reason and purpose of CSR, which is to spend on the society without any selfish motives.

4.3.1.3 Tax exemptions

Another probable reason for this can also be the tax exemption levied on every sector of the CSR spending. "Donations made to the PM CARES Fund shall be eligible for 100% deduction under section 80G of the IT Act."[25] This clearly gives companies a motive to spend more on such causes and sectors that have higher tax exemptions, like COVID-19 & PM CARES fund, in order to get a tax rebate. Notably, spending on slum development has no such express tax rebate. Combined, these reasons could explain the negligible amount spent.

4.3.2 Discrepancies within the existing spendings:

Other than this minimal amount of spending of CSR funds on Slum development as a sector, another cause of concern for India may be the fact that there exists a lot of disparity even within these spendings. Firstly, the majority of the amount collected for Slum development is being spent on one state, Telangana. In the financial year 2022-23, out of the Rs. 93.84 crores spent on CSR for slum development, a whopping Rs. 58.07 crores were spent only in the state of Telangana [26] as shown in *Figure 2.*

[21] PRANAV SINGH ET. AL., *RESETTLEMENT OF SLUM DWELLERS A HANDBOOK FOR CITY GOVERNMENTS*, 2, (Centre for Urban and Regional Excellence.
[22] Varun Garg Et. Al., *An Empirical Study on the Corporate Social Responsibility Regime in India: Pre-COVID and COVID Times*, Review of Market Integration, 13, 124-153 (2021) https://journals.sagepub.com/doi/full/10.1177/09749292221093835
[23] Id.
[24] *CSR- A marketing tool?*, BUSINESS STANDARD, (Dec. 26, 10:10 a.m.) https://www.business-standard.com/article/specials/csr-a-marketing-tool-112112600079_1.html
[25] Ministry of Finance, *Finance Ministry issues Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020 today,* PRID 1609734, (Notified on Mar. 31, 2020) https://pib.gov.in/PressReleasePage.aspx?PRID=1609734
[26] Ministry of Corporate Affairs, Supra note 14

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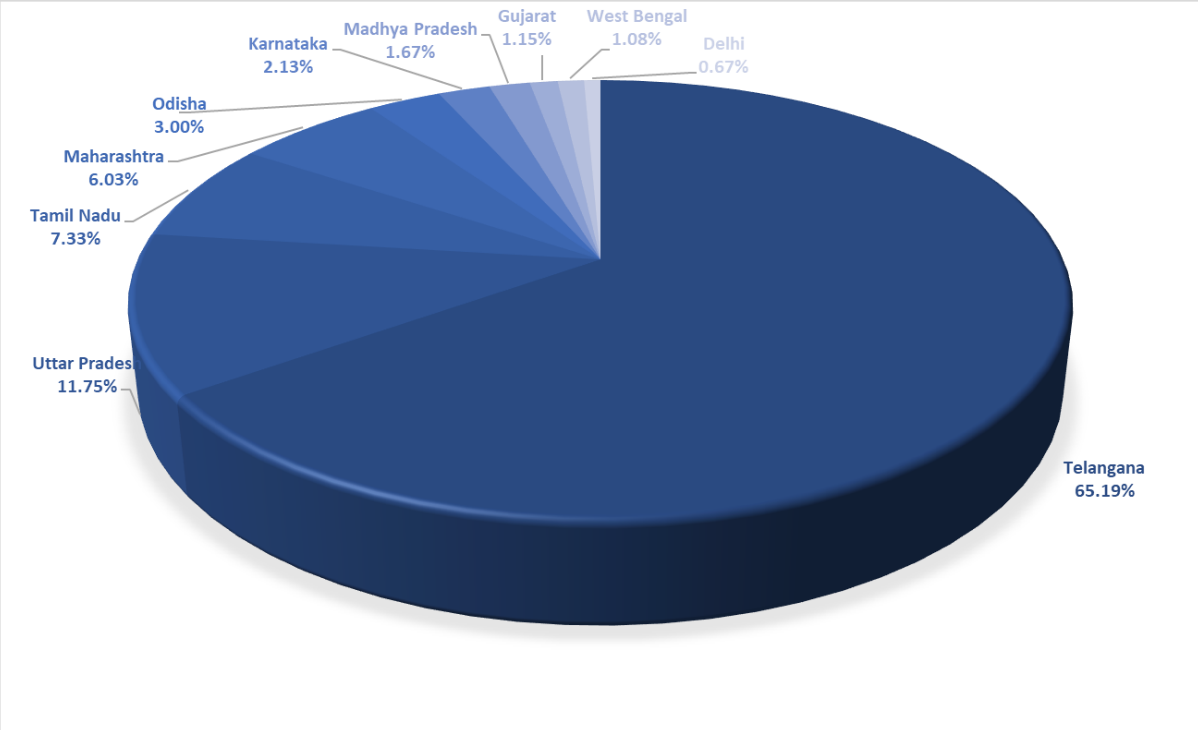

Figure 2: Division of the amount spent on Slum Development state-wise

A similar trend was observed in the past years as well as depicted by the graph. This spending, in no way, can be explainable. Even if Telangana were to have the biggest slums area-wise, which it doesn't, allocating about 65% of the entire funds would still not be justifiable, while other states have to keep quarreling for the remaining 35% of the spendings.

Secondly, there is a high degree of irregularity in the yearly spendings on slum development. For instance, in the financial year 2014-15, the amount spent on slum development was Rs. 101.14, and in the very next financial year, it was merely Rs. 14.10 crores.[27] The pattern of annual spending on Slum Development is shown in *Figure 3*.

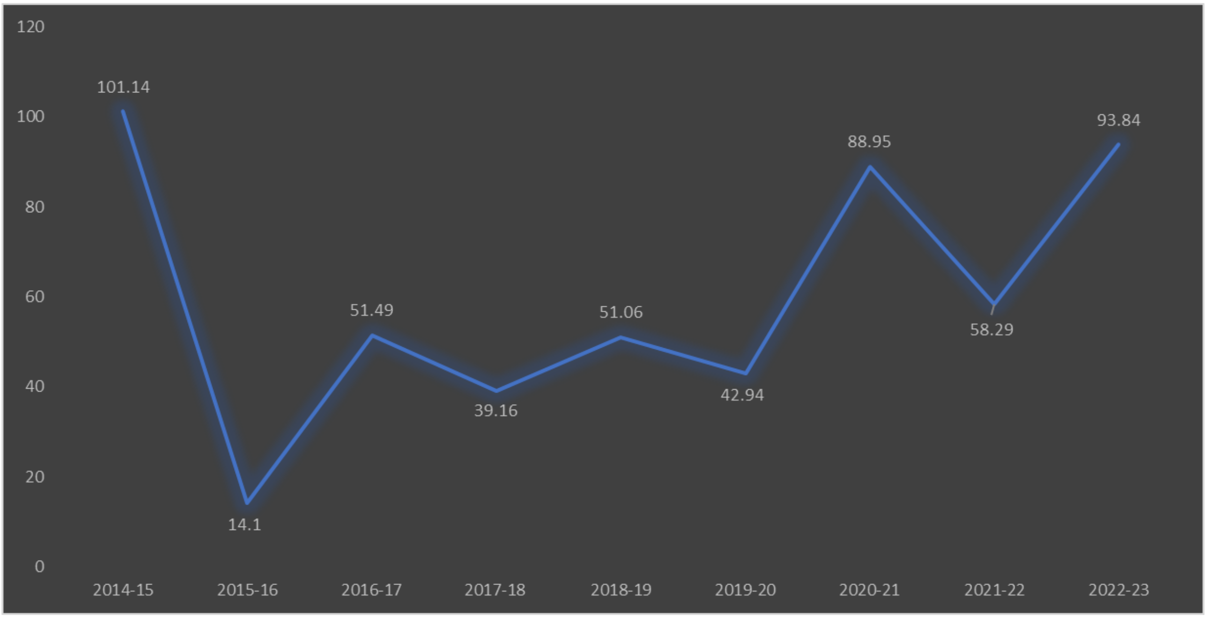

Figure 3: Annual Spendings on slum Development

[27] *Id.*

Such a vast disparity in spending amounts on a yearly basis is not good news. Slum development is naturally an income intensive process. [28] Whether done by relocating the residents into public housing permanently, or by developing the very land on which the slum is placed to make a more habitable environment would require a lot of money and time. It is obvious that this wouldn't happen in the course of just a year. Thus, it would require regular and timely investments made for developing a slum area. When such a huge disparity of spendings is observed, it means that spendings aren't regular which would hinder the sector's progress.

5. Conclusion & Way Forward

In conclusion, this research highlights critical flaws in India's CSR framework under Section 135 of the Companies Act, 2013, including loopholes, inconsistencies, and the misuse of CSR as a capitalist tool to boost profitability and brand image rather than fulfilling its core purpose of societal welfare. By using slum development as a case study, the research examines how disparities in fund allocation and geographical biases further exacerbate these issues. Such practices not only undermine the intent of CSR but also fail to address the urgent needs of vulnerable communities, emphasizing the necessity for a more accountable and transparent CSR approach in India.

All of these problems boil down to only one solution, as suggested by the authors. There is clearly an urgent need for government intervention during allocation of all CSR funds that are being spent. Taking slum development as our example, as explained earlier, the fact that in most financial years, Telangana is being allocated the majority of the funds is in no way explainable and the vast disparity in spendings every year cannot be an indicator of sound development. Both of these can easily be combated when the government intervenes to allocate the funding. However, imposing such restrictions on companies all at once may cause an uproar among them, thus this must be done in phases.

a. The first step could be that the government allocates the amount received by each sector to states as per the state's need. If there aren't enough funds to meet every state's needs, the government should ensure that the amount going to every state is justifiable and in accordance with the slum area in that respective state. This would ensure that not all most of the spending is going to one state so as to meet all its requirements while other states are forced to make do with what's left.

b. Once such regulations are introduced and are practiced regularly, the next step could be that the government sets up a maximum and minimum spending that every sector must receive. If one sector does receive an amount equal to its maximum amount, then further spending on that sector is not permissible until the maximum amount of all other sectors is achieved. This ensures that one sector isn't being overspent on, while a few others are being sidelined.

c. While this ensures that CSR spendings are being allotted in a fair manner on paper, the practical issue of corruption cannot be overlooked. As an attempt to combat that, the authors would recommend that all officers in charge of this allocation, would directly be answerable to the suitable court of law and if found guilty of the crime of corruption or its likes, would not only invoke civil but also criminal liability. A specialised tribunal for this sole reason may also be established to ensure speedier redressal of such issues. This would deter the officers from indulging in any sort of corrupt activities.

[28] Joost de Bont, *Coping with Informality - A Short History of Slum Development in Latin America,* A—D, (Dec. 26, 2024 10:43 a.m.) https://architectureindevelopment.org/news/124