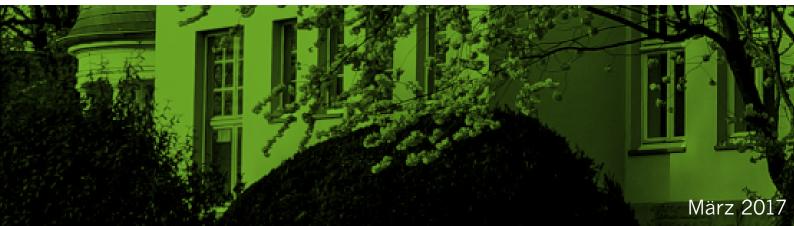Damien Krichewsky

CSR PUBLIC POLICIES IN INDIA'S DEMOCRACY
AMBIGUITIES IN THE POLITICAL REGULATION OF CORPORATE CONDUCT

März 2017

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FIW WORKING PAPER NO. 06

ABSTRACT

The rise of public policies in the field of Corporate Social Responsibility (CSR) suggests a reassertion of state power over a phenomenon initially designed to weaken public authorities. But depending on policy objectives and underlying state-business relationships, CSR public policies seem to oscillate between the steering of corporate conduct towards political goals, and the provision of political support to business interests. The present paper offers new perspectives on this ambiguity. Using social systems theory to guide a comparative study of two major Indian CSR policies, the analysis distinguishes two levels. At a functional level, the introduction of CSR in Indian regulatory politics produced more or less constraining expectations that open up opportunities for companies to participate in the performance of political functions. At an operational level, however, even a "mandatory" policy designed primarily according to political calculations let companies decide how they perform these functions. This persistence of voluntarism, which is supported by the semantic properties of "CSR", consolidates the role of profit-driven calculations in the regulation of corporate conduct and, in the Indian case, in the redistribution of resources for social welfare. Research perspectives on the implications of CSR public policies for democracy are outlined in concluding remarks.

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PUBLICATION DETAILS

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1. INTRODUCTION[1] [2]

Historically, Corporate Social Responsibility (CSR) has been closely associated with voluntarism as an alternative to state intervention. Business ethics, which emerged in America in the early twentieth century, was to a large extent about minimizing legally binding regulation of economic activity by putting the virtues of self-regulation and enlightened self-interest forward (Abend 2014). Around the mid-twentieth century, in the wake of the Great Depression, business actors built upon this line of argument and strategically institutionalized CSR as a form of "private governance" to contain state intervention: the public was to hold business corporations, rather than state authorities, responsible for ensuring that commercial operations mind the public interest (Kaplan 2015).

This initial project underlying CSR has been further expanded and sophisticated over the years. The conception of CSR both as a set of voluntary managerial practices and as an alternative to legally-binding regulatory constraints remains predominant (Dentchev, van Balen and Haezendonck 2015). However, an increasing number of non-business actors have joined the CSR bandwagon, and expanded the reach of CSR beyond the purview of firms to make it an integral component of multi-stakeholder governance institutions. As part of this trend, national states and intergovernmental bodies such as the European Union have multiplied public policies in the field of CSR. These policies formally aim to engage companies in societal problem-solving by shaping their CSR behavior through norms (e.g., laws, guidelines, standards) and the provision of dedicated resources (e.g., knowledge platforms, toolkits).

This growing "government of self-regulation" seems like a reassertion of the state and its political objectives in a field that was initially conceived to undermine the regulatory power of public authorities (Gond, Kang and Moon 2011; see also Steurer 2011). However, a closer look reveals more ambiguity. While CSR policies are regulatory instruments that originate from the state, they might also end up transforming the regulatory power of the state by promoting and legitimizing companies' control over the performance of business-relevant regulatory and social welfare redistributive functions. To which extent are CSR public policies reasserting the regulatory power of the state, or weakening state intervention by further institutionalizing private forms of governance?

So far, the literature has addressed this question by emphasizing the diversity of cases and configurations, which span a continuum ranging from business-constraining to business-supporting CSR public policies (see for instance Fox, Ward and Howard 2002; Gond Kang and Moon 2011; Knudsen, Moon and Slager 2015). Business-constraining measures, such as extra-financial reporting obligations, would provide the state with subtle regulatory resources to get companies contribute to political objectives, including objectives that diverge from corporate interests. CSR policies consisting in public-private partnerships, which companies can join on a voluntary basis, would provide new opportunities for state and business actors to tackle societal problems on the basis of win-win formula. At the other end of the spectrum, business-supporting policies would endorse and facilitate the rise of CSR practices that are based mainly on voluntary and profit-driven *modi operandi*.

Empirical studies suggest that the adoption of rather business-constraining or rather business-supportive policy measures by governments depends on distinct constellations of interests and power relationships characterizing the conditions of production of these policies in various political-economic contexts. In Spain, for instance, business interest groups achieved to dominate the deliberative making of a CSR policy whose initial goal was to strengthen the accountability of corporate actors for the impacts of their commercial operations on society. The result was a policy that provides resources for companies to seize the strategic opportunities of CSR on a voluntary basis (Archel, Husillos and Spence 2011). Such business-supportive approach also characterizes partnership-based British CSR policies, which were a joint attempt by state authorities and business actors to increase the public acceptability of contentious neo-liberal economic policies (Kinderman 2012). In the case of the European Union, business interest groups achieved to neutralize the initial regulatory ambitions of Brussels, and to turn its CSR policy into a strategic resource for companies. However, in the aftermath of the financial crisis of 2009, a new political context pushed European CSR policies back towards a stronger regulatory agenda (Kinderman 2013). Such fluctuations also characterize the Danish case, where CSR public policies have oscillated between business-supportive and business-constraining measures, depending on which political party was governing the country (Vallentin 2015).[3] In short, as business interest groups have a constant preference for voluntarism, the adoption of CSR policies that rather strengthen or that rather weaken the regulatory power of state authorities would depend mainly from the government's policy preferences and/or its ability to withstand business lobbying. [4]

The present paper argues that by emphasizing variations, the literature tends to undervalue commonalities characterizing CSR public policies. These public policies vary at a functional level: CSR public policies tackle *various societal problems* (e.g., social welfare, sustainability, industrial competitiveness) by involving companies *more or less forcefully* in the performance of regulatory and redistributive functions. But both "voluntary" and "mandatory" CSR policies generally refrain from exerting major constraints at the operational level, where companies decide *how* they want to perform these functions. This common persistence of voluntarism at the operational level allows—and often explicitly encourages—companies to participate in regulatory and redistributive functions on the basis of profit-oriented "cost/benefit" calculations. As a result, *both* "business-supportive" and "business-constraining" CSR public policies introduce institutional structures that are likely to weaken the role of state authorities in the regulation of business, while offering opportunities for companies to control how business-relevant societal problems are selected and processed in society.

A further argument of the paper is that the variations of CSR public policies at the functional level and their common voluntaristic core at the operational level are not solely an outcome of the conditions of their production and the underlying constellations of interests and power relationships. The possibility of variations and the commonalities of CSR public policies can also be traced back to the semantic properties of the CSR concept itself. On the one hand, the CSR concept allows public policy-makers to institutionalize different—including contradictory—meanings of CSR, which are tied to different levels of expectations with regard to what companies could, should or must do to be considered "socially responsible". On the other hand, the CSR concept provides state authorities with opportunities of intervention whose thematic scope is broad and flexible, which can relieve political pressure by putting companies in charge of addressing wicked problems, and which can minimize social and political dis-

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[3] On the variety of policy objectives underlying government intervention in the field of CSR, see also Knudsen and Brown (2015).

[4] A recent comparative analysis provides a good illustration of this view, as it argues that business actors have a constant preference for voluntarism, so that the more or less constraining character of CSR public policies depends on the positions and political power of public policy-makers. See Kinderman (2016).

ruptions by emphasizing potential synergies between business expansion, social welfare and environmental sustainability. As explained below, making use of these semantic resources leads public policy-makers to design CSR policies that safeguard the operational autonomy and the economic interests of firms.

This analysis is based on an in-depth comparative study of two major CSR public policies that have been introduced recently by India's central government. The first policy, called the National Voluntary Guidelines for the Social, Environmental and Economic Responsibilities of Business (NVGs), was introduced in 2011 by India's Ministry of Corporate Affairs. The second policy consists in a CSR clause known as the "section 135", which was integrated in India's new Companies Act of 2013. While the NVGs are typical of business-supportive policies, the CSR clause of the Companies Act is located towards the business-constraining end of the spectrum. This constellation makes the Indian case particularly interesting, as both the variations and the commonalities of these two policy types can be examined in a similar political-economic context.

The empirical analysis of India's CSR public policies is guided by a constructivist framework based on Niklas Luhmann's social systems theory (Luhmann 1995, 2012 & 2013). This framework enables to observe how the concept of CSR supplies political systems with policy options that have peculiar characteristics. This framework also allows to study how political systems exploit these policy options in the course of policy-making processes that define and institutionalize CSR in various ways. Finally, the framework provides conceptual resources to examine how the resulting institutional characteristics of CSR public policies impact the respective roles of state authorities and business organizations in the regulation of corporate conduct and the redistribution of wealth in society.

After a brief theoretical and methodological section, the paper starts the empirical analysis by examining the problems and underlying political-economic conditions which led certain Indian public policy-makers to view CSR as a horizon of promising political opportunities. A second step investigates the policy-making processes that followed the penetration of the CSR concept in India's political system. Focusing on the NVGs and the section 135 of the Companies Act, the study analyzes the conditions and processes through which participants–in particular state authorities, business actors and experts–negotiated both the meaning of CSR and the related expectations towards companies that were institutionalized. In a third step, a comparative analysis of the two policies explores how they introduce new patterns of interplay between state and business actors in the regulation of corporate conduct. The paper concludes with remarks on how CSR public policies, which participate in the shift from "government" to "governance", might reduce the possibility of a democratic expression and processing of conflicts opposing business profitability and competing collective interests in society.

2. PUBLIC POLICIES ON CORPORATE SOCIAL RESPONSIBILITY: AN ANALYTICAL FRAMEWORK

2.1. Contested meanings of Corporate Social Responsibility

While CSR scholars have invested numerous efforts in defining what CSR actually means, CSR remains an "essentially contested concept" which "inevitably involves endless disputes" about its proper meaning (Okoye 2009: 617). These disputes extend beyond the sphere of academic debates. They involve business organizations, experts and consultants, NGOs, protest movements, mass media, policy-makers, judicial authorities, and many other participants embedded in a variety of contexts and operating at various (local, regional, national, transnational) scales. CSR public policies directly contribute to this social construction of the meaning of CSR: actors involved in the making of these policies cooperate and compete to institutionalize certain meanings of CSR rather than others (Bernhard and Christian 2010).

Social systems theory provides analytical resources to study these meaning-generating CSR policy-making processes and their impacts on the political regulation of corporate conduct. In particular, social systems theory distinguishes between the semantic, the operational and the structural dimensions of social systems.

The *semantic dimension of social systems* consists in the cultural reservoir of concepts which social systems have generated and retained in the course of their socio-cultural evolution (see in particular Luhmann 2012 & 2013; Stichweh 2006; Andersen 2011). This reservoir of concepts supplies social systems with certain distinctions and not others, thereby impacting their operations: it conditions the categories with which these systems can operate in given cultural contexts. [5] The concept of "CSR", which emerged in the United States in the early twentieth century and has expanded since then to gain global significance, is part of this cultural reservoir. By providing social systems such as political systems, mass media, law, business organizations and NGOs with the basic distinction "socially responsible"/"socially irresponsible companies", the concept of CSR impacts the way these systems can observe and describe corporate entities and their relationships to "society".

However, concepts and their underlying distinctions have no meaning as such. The social meaning of concepts is generated in *the operational dimension of social systems*, where social systems selectively mobilize distinctions and relate them with one another in the course of their constitutive communication processes. This applies to "CSR", whose meaning depends on the way social systems relate it with other distinctions such as "ethical/unethical", "substantial/window dressing", or "useful/not useful" for business development.

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[5] Distinctions draw a difference between something (e.g., a price, a change in weather conditions, a color, a particular mood, the moral value of a political decision, an artistic event) and that which is not being distinguished. Social systems operate on the basis of distinctions by using language or other media of communication to selectively indicating certain distinctions in their communication processes. For instance, public policy-makers discussing about the opportunity of formulating a CSR public policy participate in political communication, which in this particular case might consist in sequences of interrelated distinctions about "what is CSR", "what are the alternative policy options", "which problems would it address", "what political benefits and costs can be expected", etc.

More precisely, every time a social system selects "CSR" in the flow of its communicative operations, it introduces a distinction that opens up a horizon of potential other distinctions which could be selected as a meaningful "next step" to pursue the sequence of communication. This meaning horizon of potential "next step" distinctions comprises three dimensions: the *material dimension,* [6] in which distinctions refer to things (e.g., high/low levels of pollution), the *social dimension*, in which distinctions refer to individuals and organizations (e.g., who promotes or benefits from CSR; large companies/SMEs), and the *temporal dimension*, which comprises distinctions about time (e.g., responsibility for past events/for building a better future). The actual meaning of CSR is generated under various conditions each time social systems mobilize the concept of CSR, and select one of the potential "next step" distinctions from within the three-dimensional meaning horizon that was opened up by the distinction "socially responsible/irresponsible company".

This meaning-generating process which characterizes social communication is interrelated with the *structural dimension* of social systems. Social systems theory defines structures as more or less formalized expectations that define *normal* ways of connecting distinctions with one another in the flow of communication. Structures somewhat relieve social systems from the complex task of selecting distinctions in the course of their operations, as these systems can lean on established meaning patterns. By repeating these patterns, social systems contribute to reinforcing prevailing structures. In the Indian case, for instance, associating CSR with traditional philanthropic practices, such as the funding of poverty alleviation projects in rural areas, has been a normal (expected) thing to do, and companies that follow this informal norm contribute to strengthening this expectation (Mohan 2001; Sundar 2013). Conversely, social systems which deviate from established structures contribute to weakening or to displacing them: what used to be expected progressively fades away, and what used to be a deviant course of communication is repeated often enough to become the new norm.

While this institutional process applies to informal structures, formal structures such as CSR laws, guidelines and standards involve different mechanisms of reproduction and change. Formal structures are established according to specific procedures, and this formalization ensures that expectations remain valid in spite of recurring occurrences of deviance: even a law that is poorly implemented remains valid until it is changed through formalized law-making procedures.

The interplay between semantics, operations and social structures is not linear (Stichweh 2006). Semantic evolution can follow structural change, as social systems create new concepts to describe this change. But semantic innovation can also enable or facilitate structural change, as the introduction of new conceptual categories in social systems opens up new possibilities of communication that can induce structural change. This seems to be the case for CSR public policies. By supplying public policymakers with a new conceptual category, CSR has opened up new horizons for political intervention. In doing so, the CSR concept has enabled the rise of new regulatory structures, such as the Indian NVGs and the CSR clause of the Companies Act.

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[6] Sometimes also translated from the German original term sachlich (which refers to things) as "factual" dimension.

2.2. Corporate Social Responsibility in regulatory politics: new horizons of intervention

This theoretical perspective enables an analysis of the meaning horizon which is opened up by CSR when this concept is introduced as a policy option in political systems such as India's democracy. In spite of the "essentially contested" nature of the CSR concept, this meaning horizon is not infinite. Its boundaries circumscribe the type of regulatory structures that political systems can craft as they selectively exploit the meaning potential of CSR.

With regard to the material dimension of meaning, "social (ir)responsibility" is not theme-specific. This semantic characteristic of CSR makes it an attractive policy option, as it opens up a broad and flexible horizon of problems which public policy-makers can claim to address at once: child labor, working conditions, gender as well as ethnic and religious discrimination, consumer safety, public health, rights of expropriated farmers and indigenous communities, corruption involving public officials, industrial pollution, industrial hazards, nature conservation, climate change, etc. This characteristic positions CSR as a cure for the deficiencies of more conventional, legally-binding and issue-specific regulatory instruments (e.g., labor laws, environmental standards). In this respect, the concept of CSR introduces policy options which favor general and flexible regulatory instruments over specific and clear legal boundaries within which companies are expected to operate and expand.

With regard to the social dimension of meaning, the concept of CSR shifts the focus away from *government* responsibility by emphasizing corporate responsibility or by mixing the two. This semantic effect opens up new horizons with regard to the respective roles of state authorities and private business actors in the regulation of corporate conduct and the solution of societal problems. As Susanne Holmström writes, with CSR, "the political system relieves the pressure on own risky decision-making and increasingly sends on the responsibility, in particular to the economic system, by means of political initiatives aiming at internalizing the societal horizon within the business community" (Holmström 2010: 150; see also Kaplan 2015).

As for the temporal dimension of meaning, the concept of CSR opens up a forward-looking horizon of progressive opportunities by suggesting that companies can move away from the negative side of the distinction (socially "irresponsible") towards the positive side (socially "responsible"). This potential *movement* towards win-win business practices [7] is often embedded in "aspirational talk": CSR derives its power less from the actual realization of what is being promised than from the effects of the promises themselves (Christensen, Morsing and Thyssen 2013). Moreover, by assigning companies a "future-oriented political responsibility" in societal problem-solving, CSR "gives corporations the political power to define what our public problems are and how they should be fixed", while overlooking the responsibility attributed to companies for the genesis of public problems (Marchildon 2016: 60). As one of the consequences of this temporal semantic characteristic, CSR tends to favor regulatory instruments which focus on the promises of future consensual solutions, rather than on the actual political arbitration of conflicts. [8]

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[7] Mostly business practices that combine profit-making, social welfare and environmental sustainability, as described for instance by Elkington (1998), Prahalad (2005), Bhattacharya, Sen and Korschun (2011), and Porter and Kramer (2011).

[8] The emphasis of CSR-related regulation on consensus, which undermines the legitimacy of political conflicts and devaluates political alternatives, is described in more details by Jacobsson and Garsten (2012).

The way this meaning horizon was exploited in India's regulatory politics will be investigated below. This empirical investigation will pay attention to the structural outcomes of these policy-making processes, as well as to how these outcomes were produced and conditioned not only by constellations of interests and power relationships, but also by the semantic characteristics of CSR outlined above. But before, a few methodological remarks will expose the conditions under which this study was conducted.

2.3. Methodological remarks

Using a constructivist framework based on social systems theory implies a sociological analysis that sees itself as a scientific observation of the way other social systems operate—an epistemological point of view referred to as second-order observation. [9] Following this perspective, we proceed by observing how the distinction "socially responsible/irresponsible companies" penetrated India's political system when CSR was mobilized as a policy option, how the CSR concept changed the way India's political system observed opportunities to intervene on corporate conduct, and how the resulting CSR public policies introduced new structures that impact the respective roles of state authorities and companies in the regulation of corporate conduct and the redistribution of wealth in society.

To inform this analysis, we mobilized qualitative data that was generated in the course of several rounds of field visits spanning from June 2007 to September 2014. Overall, 189 semi-structured interviews were conducted with persons acting in a variety of roles (table 1). Of these interviews, eighteen were conducted with persons directly involved in India's CSR policy-making processes, fifty four were conducted with persons who provided information that was directly relevant to the analysis, and 117 were conducted with persons who provided relevant information for the understanding of the broader context in which India's CSR policies were introduced. In addition to these interviews, information was retrieved through documentary sources including official documents related to India's CSR policies, minutes of parliamentary debates, texts produced by business actors and NGOs in the framework of public consultations, reports, press articles, and a filmed "Google Hangout" debate organized in August 2013 by NextGen and CNBC TV18 on the section 135 of the new Companies Act.

This data was analzyed to reconstruct the communicative processes involved in the making of India's CSR public policies. Thanks to the triangulation of information provided by interviewees and documentary sources, the empirical analysis reconstructs how participants tried to introduce distinctions on CSR in India's CSR policy-making processes, and how India's political system selectively processed these distinctions while elaborating CSR public policies.

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[9] According to social systems theory, there is no direct access to a reality "as it is", nor is there any single valid point of view on society. There are as many observations and descriptions of reality—including of society—as there are systems observing it. More precisely, social systems observe and describe the world while operating, i.e., while selecting and relating distinctions on the world in the course of their communicative operations (e.g., hot/cold, good/bad, rich/poor, true/false, today/another time). For sociological systems theory, whose main purpose is to provide descriptions of society, it follows that investigating society means observing from a sociological perspective how social systems operate and observe the world: an observation of observation, or "second-order" observation. See Besio and Pronzini (2008), Lee and Brosziewski (2009) and Moser (2015, chapter 4).

Table 1: Interviews conducted on CSR in India, 2007-2014		
Interviewees		**Location and date**
Directly involved in the policy-making process (18)	Ministry of Corporate Affairs (3)	New-Delhi, December 2008 and September 2014
	Members of Parliament (Lok Sabha, the Lower House, and Rajya Sabha, the Upper House) (2)	New-Delhi, September 2014
	Indian Institute of Corporate Affairs (3)	New-Delhi, September 2014
	Members of the Drafting Committee of the NVGs, including experts, a German technical assistant, members of employers' associations and companies, members of international organizations, members of NGOs (8)	New-Delhi, June-December 2007 and September 2014
	Members of companies which participated in public consultation (2)	New-Delhi, September 2014
Sources of information that was directly used in this analysis (54)	Members of companies, including senior managers, CSR professionals and Public Relations managers (26)	New-Delhi, Himachal Pradesh and Chhattisgarh, January 2008-April 2009 and January 2011
	Regional and district-level political actors (15)	Himachal Pradesh and Chhattisgarh, January 2008-April 2009 and January 2011
	Activists (13)	New-Delhi, Himachal Pradesh and Chhattisgarh, January 2008-April 2009
Sources of information that is relevant to the understanding of the broader context of India's CSR policies (117)	Members of companies, trade union representatives, political actors and bureaucrats, activists, villagers living close to factories or industrial projects, journalists.	New-Delhi, Himachal Pradesh and Chhattisgarh, June 2007-April 2009 and January 2011.

3. THE RISE OF CORPORATE SOCIAL RESPONSIBILITY AS A POLICY OPTION IN INDIA'S PRO-BUSINESS SETTING

3.1. The contentiousness of India's pro-business development policies

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Over the past few years, India's central government has adopted a series of public policies that urge companies towards more CSR. It started in 2007, when the Prime Minister Manmohan Singh took the opportunity of a speech held at the General Assembly of the Confederation of Indian Industries (CII) to exhort India's business community to act in a socially more responsible manner. In this speech, the Prime Minister outlined a Partnership for Inclusive Growth consisting of ten guiding principles, which range from fair labor conditions and ethical business practices to socially responsible advertising and the use of environment-friendly technologies.

In 2011, the government carried on with the release of National Voluntary Guidelines for Social, Environmental and Economic Responsibilities of Business (NVGs). A year later, the Securities and Exchange Board of India (SEBI) issued a circular on Business Responsibility Reports, which requires the hundred largest listed companies by market capitalization to report annually on their social responsibility, along the lines indicated in the NVGs.

In August 2013, yet another step was taken with the adoption of the new Companies Act. Its section 135 requires all companies above a certain size to spend at least 2 percent of their net profit in the pursuance of a CSR policy approved by the Board of Directors. According to official data for the fiscal year 2014-2015, which was the first year of implementation of the Companies Act, 409 listed private companies and 51 public sector enterprises declared about ₹40 billion (about $600 million) and about ₹24 billion (about $360 million) on CSR projects under this provision. **[10]**

This growing mobilization of CSR by India's political system has arisen from deep transformations in the country's political economy over the past decades. In particular, CSR has gained political relevance as a result of a gradual shift from socialist development policies dominated by an interventionist state towards supply-side policies that promote private companies as the primary engine of development. **[11]** This shift has been described by Atul Kohli as a "pro-business tilt"(Kohli 2012).

It was initiated by Indira Gandhi after her return to power in 1979. Departing from her fierce pro-poor and anti-capitalist rhetoric of the 1960s and 1970s, which had been

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[10] This data does not comprise companies that are not listed on stock markets, nor does it cover companies which did not comply with the reporting requirements of the section 135. In 2013-2014, estimates of the number of companies concerned by the section 135 ranged from 1.500 to 10.000, and the MCA evoked potential spending amounting to ₹150-200 billion (about $2,2-3 billion). See Sharma (2013).

[11] The politics of economic reforms in India are the object of a vast literature. The following elements are derived in particular from Jenkins (1999), Sinha (2005), Gupta and Sivaramakrishnan (2011), Hasan (2012), Mukherji (2013), Kohli (2012) and Corbridge, Harriss and Jeffrey (2013).

accompanied by a tightening of the political-administrative control of India's private corporate sector, Indira Gandhi introduced gradual economic deregulation to foster private investment. Her son Rajiv Gandhi continued to pursue the dismantling of the previous system of production licenses, quotas, and price and distribution controls. But the pace and extent of reforms was constrained by resistance from multiple corners, including from within the Congress Party. The electoral debacle of the Congress in 1989 further hindered economic reforms, as it was interpreted across the political spectrum as a sanction imposed by the economically poor masses of citizens on a party that seemed to have abandoned its socialist goals to embrace the interests of the country's economic elite.

In 1991, however, a crisis of payment helped Narasimha Rao's reformist government to push unpopular reforms through Parliament. The Indian economy was significantly deregulated and liberalized. Since then, the overall trend characterizing India's national and regional development policies has been to foster private-sector led economic growth by promoting conditions that enhance the profitability of private investment. This trend is illustrated by the Special Economic Zone Act of 2005 and by regional industrial policies, which both try to encourage private investments by providing public resources (e.g., tax holidays, cheap land, tailored infrastructures) while easing regulatory constraints (e.g., labor laws, environmental laws) (Jenkins, Kennedy and Mukhopadhyay 2014; Kennedy 2014).

As private companies have moved towards the center of India's development policies and processes, the question of relationships between profit-oriented economic activities on the one hand, and the achievement of collective aspirations framed—sometimes in contradictory terms—by the concept of "development" on the other hand, has become a major source of contention (Krichewsky 2011).

Policy-makers pursuing pro-business development policies tend to emphasize the positive outcomes of profit-driven investments for "development". Fast GDP growth (about 8-9 percent between 2002 and 2009) has been largely attributed to economic reforms that stimulate the dynamism of India's capitalists. Since the growth momentum has slowed down, adopting policies that will put it back on track has been a major preoccupation of pro-business policy-makers. Labor laws should be further eased to encourage rapid industrialization, in order to provide employment to the ten-fifteen million people who enter the labor market every year. [12] Land acquisition must be facilitated for companies to set up plants and for infrastructures required by companies to be constructed. [13] Environmental clearances should be granted on a fast-track basis to unlock large-scale industrial projects. [14]

Companies, business leaders and employers' associations such as the Confederation of Indian Industries (CII) and the Federation of Indian Chambers of Commerce and Industry (FICCI) contribute to producing these views, while framing profit-oriented investment as a key source of socially inclusive and ecologically sustainable development. As illustrated by a joint report of the CII and the World Wildlife Fund, entitled "Indian Companies with the Solutions that the World Needs: Sustainability as a Driver for Innovation and Profits", the concept of CSR is a key ingredient of this discourse (Joshi, Arora, Pamlin and Sinha 2008; see also also Confederation of Indian Industries 2014).

Conversely, other discourses emphasize discrepancies and tensions between profit-

[12] Reuters, 9 June 2015, Modi to launch India's biggest labour overhaul in decades ; The Economist, 11 May 2013, Wasting Time.

[13] Forbes, 22 April 2015, Modi's Economic Reforms Agenda In India Hits Biggest Roadblock–Land; The Economic Time, 16 December 2014, Modi government looks to amend Land Acquisition Act to make it industry friendly.

[14] Hindustan Times, 18 September 2015, Under new norms, 36 industries may not need environmental clearance; India Today, 11 May 2015, Centre liberalises environment laws for ease of business.

oriented investments and "development". The sharp rise of socio-economic inequalities over the past two decades, as well as low scores on the Human Development Index in spite of fast economic growth, are put forward to denounce economic policies that would cater primarily to the needs and interests of an urban upper-middle class. [15] Radicalizing concerns for India's "jobless growth," (Sen and Dasgupta 2009) trade union federations call for alliances with social movements to counter "an unparalleled attack on working people" by a government which "equates the rights of corporates with the rights enjoyed by citizens," and whose policies are "clearing land of the poor, dalits, tribals, backwards" while "providing a workforce with low wages and unprotected conditions of work and employment" (New Trade Union Initiative 2015).

Over the past decade, numerous industrial investment projects such as Vedanta's and POSCO's mining projects in Odisha, Tata Steel's projects in Odisha and Chhattisgarh, Tata Motor's plant project in West Bengal, Lafarge's cement plant projects in Meghalaya and Himachal Pradesh, Areva's nuclear plant project in Maharashtra, and Coca Cola's beverage plants in various parts of the country, to quote but a few high-profile cases, have already been challenged by protest movements in mass media, in public demonstrations, as well as in High Courts and in India's Supreme Court.

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3.2. The promising horizon of CSR as a regulatory instrument

Far from being limited to the fringes of India's political system, discourses and collective mobilizations that challenge India's "pro-business" development policies are often enmeshed with party politics and electoral competition. The political use of peasant protests against Tata Motor's plant project in West Bengal by the Trinamool Congress Party in 2007, which helped propel its leader Mamata Banerjee to the post of Chief Minister in 2011, is a case in point. More generally, as India's growth model has de facto primarily benefitted upper-middle and upper classes (Drèze and Sen 2013; Suryanarayana and Das 2014), the growing political mobilization of lower castes and classes has strengthened the significance of "inclusive development" as a central theme in Indian politics (Jaffrelot 2003; Weiner 2001). As Zoya Hasan puts it, "reconciling the welfare of the people at large with economic liberalization alongside political pressures for distribution was the greatest challenge confronted by the Congress after it returned to power in 2004" (Hasan 2012: 123).

In this context, India's government became increasingly interested in the horizon of political opportunities opened up by the concept of CSR. The broad and flexible scope of material problems covered by CSR was making it an attractive instrument to deal with such a wide and multifaceted problem as the relationship between "business" and "development". As explained by a senior bureaucrat of the MCA:

We realize that the government alone is not equipped to solve the social problems like education, health, local infrastructure, etc., on its own. We need the business sector to work with us, so as to make sure that the benefits of development reach the bottom of the pyramid (a senior bureaucrat of the MCA, December 2008).

CSR seemed all the more relevant as it could pretend to palliate the ineffectiveness of a wide range of issue-specific regulatory measures:

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[15] While being the fourth largest economy in the world in purchasing power parity, India ranked 135 on the Human Development Index in 2010. Criticizing the "growth-centered" conception of development attributed to Indian policy-makers is a leitmotif among Indian social movements, which denounce distributional "injustice" and ecological "crisis" that is hidden behind impressive figures of GDP growth.

In India, we have a large number of laws, rules, regulations, that companies have to follow. On environment, pollution, labor. But the compliance of so many laws is an issue. Our laws in India are good laws, and there is a law for everything. But you know, as for other countries, we have a problem in implementation and enforcement. The corporate sector raises the issue of compliance cost very strongly (a senior bureaucrat of the MCA, December 2008).

With regard to the social dimension of meaning, CSR was also providing state authorities with the opportunity to relieve political pressure by encouraging companies to weaken the wave of protest movements and popular discontent by themselves. Asked about the problems that the government was trying to address with CSR, a senior bureaucrat of the MCA mentioned

instances where local communities have raised issues and sometime have strongly opposed industrial projects. The now very famous case of the Nano project of Tata Motors is a good example (a senior bureaucrat of the MCA, December 2008).

An executive of the National Thermal Power Corporation (NTPC), who was closely involved in the design of India's CSR policies, explained:

At that time, the perception of the people regarding companies was getting negative, and the government wanted CSR to become something which companies would do systematically, not just according to the good will of the CEO" (an executive of the National Thermal Power Corporation, September 2014).

This objective was also shared by Members of Parliament who participated in the making of CSR public policies:

The first purpose is that it will decrease and appease the discontent of localities where people have to part on a permanent basis with their land, their forests and their livelihood. And the second purpose is that it will commit the local people to the company. They will come to the company to discuss about these CSR projects, and it will create an interface. It will help minimize the turmoil (a member of the Lok Sabha, September 2014).

Finally, the forward-looking temporal dimension of the meaning horizon opened up by CSR seemed politically advantageous. The Congress-led government of the United Progressive Alliance had won the national elections of 2004 and 2009 thanks to an electoral program focusing mainly on "inclusive growth" and the problems of the *aam admi* (the "common man"). Hence, the rising opinion according to which its policies were in fact catering to the interests of the country's elite were a political threat that needed to be tackled rapidly. By formulating public policies that encourage companies to join the CSR movement, the government could display rapid action that was pointing to promising possibilities of a gradual convergence of "business" and "development".

While CSR was supplying India's political system with promising opportunities of intervention, exploiting these opportunities required to define what CSR actually means as a regulatory instrument. The following section compares how this meaning-generating process unfolded in India's two major CSR policy initiatives, the NVGs and the section 135 of the Companies Act.

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4. NVGS VERSUS SECTION 135?
THE COMMON CORE OF
CSR PUBLIC POLICIES

4.1. The National Voluntary Guidelines (NVGs): defining CSR as a business case

The policy initiative which led to the formulation of the NVGs by the Indian Ministry of Corporate Affairs (MCA) in 2011 is a direct follow-up of the Partnership for Inclusive Growth presented by Manmohan Singh at the CII in 2007. The same year, as the proposed Partnership seemed to have little effects, the Union Cabinet mandated the MCA to explore further CSR policy options.

Previous exchanges between the MCA and the German international cooperation agency *Gesellschaft für Internationale Zusammenarbeit* (GIZ) had already revealed an opportunity for collaboration: the GIZ was running a program designed to promote CSR in developing countries as an instrument to boost "business success" and "competitiveness" by involving companies as partners for "economically feasible, socially fair and ecologically stable development" (Gesellschaft für Internationale Zusammenarbeit 2011: 3) Building on this program, the MCA and the GIZ launched an Indo-German Corporate Social Responsibility Initiative in 2008, which resulted in the development of the NVGs. **[16]** Three characteristics of the policy-making process shaped the way it gave meaning to CSR by relating the concept of CSR with certain distinctions and not others.

First, at least partly as a result of the involvement of the GIZ, the initial policy goals of this initiative were informed by the global mainstream CSR discourse of the 2000s. In particular, the MCA and the GIZ adopted the view that CSR can most effectively enhance the contribution of companies to socially inclusive and environmentally sustainable "development" when it is inscribed in the core business activities of firms (see for instances Porter and Kramer 2006). Following this perspective, the predominant conception of CSR among Indian companies, according to which being "socially responsible" primarily means carrying out philanthropic activities such as community development projects in the vicinity of production units, appeared as outdated. To leverage the opportunities provided by CSR, the state needed to get companies envisage CSR as being about inventing "socially responsible" ways of doing business.

In addition, both the MCA and the GIZ conceived of CSR as being a discretionary domain of corporate management (see for instances McWilliams and Siegel 2001). This premise meant that public authorities could intervene as a facilitator, but not dictate what companies should do with regard to CSR:

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[16] This Indo-German cooperation is a good illustration of the transnational dimension of CSR, which also characterizes the promotion of CSR by national public authorities. While this paper focuses on CSR policy-making processes that are internal to India's political system, the claim is obviously not that these processes were insulated from transnational communication flows, in which they were partly embedded.

Since CSR should be voluntary, since only the management of a company can decide if the company should adopt CSR or not, the government can only incite companies, encourage them, upskill them" (a senior bureaucrat from the MCA, December 2008).

A further consequence of this premise was that to change the CSR practices of companies through voluntary means, public authorities would need to stick to an approach of CSR that benefits the financial bottom line of companies.

Against this backdrop, the MCA and the GIZ decided to organize a multi-stakeholder deliberation, whose role would be to adapt this CSR approach to the Indian context, and to specify its content with a set of voluntary CSR guidelines. In July 2008, a multi-stakeholder Guidelines Drafting Committee (GDC) was constituted. Formally, members of the GDC were selected so as to involve representatives of all relevant institutional stakeholders. But in practice, the MCA and the GIZ hand-picked the GDC's members from within a small epistemic community based primarily in New-Delhi. [17] To insure that the guidelines would fit with the initial policy goal, these members were chosen not only for their expertise, but also for their commitment to the vision of CSR outlined above. [18] Trade Union leaders and activists who were more critical towards CSR were not invited.

This particular setting led to a second characteristic of the policy-making process, which is the strong cohesion among the members of the GDC, which a former member described as *"something of a club"* (a member of the GDC, September 2014). As the GDC deliberated on the principles that should structure the CSR guidelines, in sub-groups and during plenary sessions, this common ground facilitated collaboration while allowing dissent. [19] For instance, one member tried to convince the committee that the entire NVGs should be based on Human Rights, because *"rights are a substantial thing, which people can lean on, and you have multiple human rights which exist, which have been formulated"* (a member of the GDC, September 2014). To reinforce this proposal, he collected letters of support from about hundred civil society organizations. After discussions, the idea was rejected for being too at odds with the economic interests of companies, which also needed to be taken into consideration. However, owing to the importance of the topic Business & Human Rights in the field of CSR, the committee agreed to dedicate one of the guidelines' principles to this theme.

In another case of contention, some members of the GDC proposed to tackle the topic of legitimate/illegitimate business lobbying and political influence in the guidelines. Members of the GDC who were affiliated to the business associations CII and FICCI objected that their superiors would not allow them to support this idea, as this topic was too sensitive. Other members opposed the idea on the ground that the NVGs

[17] An epistemic community is „a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area" (Haas 1992: 3).

[18] The GDC comprised the project coordinators from the MCA and the GIZ, representatives from Indian and foreign companies (Tata, NTPC, Microsoft), representatives of apex business associations (CII, FICCI, Federation of Indian Micro and Small & Medium Enterprises), CSR experts from civil society organizations (TERI, Partners in Change) and from consultancy service providers (SustainAbility), as well as a representative from the apex grouping of NGOs Voluntary Action Network India. Federation of Indian Micro and Small & Medium Enterprises), CSR experts from civil society organizations (TERI, Partners in Change) and from consultancy service providers (SustainAbility), as well as a representative from the apex grouping of NGOs Voluntary Action Network India.

[19] *"One could propose a text on his or her field of expertise, and the other members would react. Because we had a good knowledge of the subject, we could counter each other, discuss each and every point"* (a member of the GDC, September 2014). *"We could have bitter fights sometime. But there was trust, and you knew you could disagree without threatening the relationship"* (another member of the GDC, September 2014).

should not legitimize lobbying, which they perceived as a threat to democracy. But a series of scandals involving collusion between large companies and high-level politicians and bureaucrats (e.g., 2G spectrum allocation scam, coal block allocation scam, illegal mining scam in Karnataka), which triggered large-scale social mobilizations, created favorable conditions for a compromise: a principle was included in the guidelines, which recognizes the right of businesses to influence government and public opinion, but which emphasizes that "policy advocacy must expand public good rather than diminish it or make it available to a selected few" (Ministry of Corporate Affairs 2011: 21).

The third characteristic of the policy-making process underlying the NVGs was the ability of the GDC to avoid direct external interferences from political actors and business interest groups. While arguments within the GDC were mostly based on "*the current literature and knowledge*" (a member of the GDC, September 2014), members of the GDC mobilized other resources against external interferences to secure the approach to CSR which they were committed to, and for which they had been initially selected.

Soon after the initiation of the drafting process by the GDC, a new Minister took office at the MCA, whom former members of the GDC describe as being close to business interest groups. In November 2009, the MCA suddenly announced that the Minister would release the CSR guidelines in December on the occasion of the India Corporate Week. The GDC presented a first draft, which had been put together on short notice. But the MCA put the committee aside and solicited an alternative document from experts close to the CII and FICCI. The resulting CSR Voluntary Guidelines 2009 translate the policy preferences of the MCA. A single "fundamental principle" states that "each business entity should formulate a CSR policy [...] which should be an integral part of overall business policy and aligned with its business goals". Moreover, the social responsibility of "Indian entrepreneurs" is presented not as an objective, but as an existing characteristic rooted in "India's ancient wisdom" (Ministry of Corporate Affairs 2009: 9-11). This political move took most members of the GDC by surprise. [20] However, in early 2010, negotiations with the MCA enabled the GDC to be reconstituted, and to resume its work under the Indo-German CSR Initiative.

After this first victory of the GDC, the MCA insisted it should design a flexible document, which should be easy for companies to follow. In spring 2010, the MCA strongly opposed the intention of the GDC to submit its first draft of the guidelines to a consultation open to a variety of civil society actors in Delhi, Mumbai, Bangalore and Kolkata. The ministry suggested that the consultation be narrowed down to exchanges with business actors. But again, the GDC succeeded in imposing its preferences: the government receded when the GDC threatened to disclose the MCA's position in a public letter that would be communicated to the press.

Yet another conflict arose when members of the GDC tried to get the MCA to introduce a mandatory CSR reporting framework for large companies that would be based on the guidelines. The ministry refused, and released the NVGs in July 2011 without such a mandatory component. But some members of the GDC turned to SEBI, which is the Indian financial market regulator. Interested in an opportunity to upgrade Indian rules to international accounting standards, SEBI issued a circular in August 2012 on Business Responsibility Reports, which requires the hundred largest listed companies by market capitalization to report annually on their social responsibility along the lines indicated in the NVGs.

[20] "*The document was shoddy, and we were really aghast, taken by surprise with what had come out. On the other hand, we were also happy that our name did not appear on this document*" (a member of the GDC, September 2014).

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As a result of this policy-making process, in the NVGs, CSR is defined as a field of opportunities for companies to conduct business operations that "harmonize" their financial performance with "the expectations of society, the environment and the many stakeholders [they] interface with in a sustainable manner" (Ministry of Corporate Affairs 2011: 6). A series of concrete expectations are outlined in the document, which comprises nine principles. **[21]** But the NVGs explicitly suggest that companies should consider these expectations depending on their own strategic priorities and the economic benefits they can expect from CSR.

The NVGs were welcomed both by reformist CSR experts, i.e., experts who believe CSR can enhance the contributions of business to the well-being of society at large, and by most of the Indian business community. Business associations, in particular, considered the NVGs to be a useful contribution to their agenda that promotes self-regulation and frames business as a driver of social welfare and environmental sustainability. Core institutions of India's political system, however, were already engaged in a different process of CSR policy-making, which ended up overshadowing the NVGs.

4.2. The section 135: defining CSR as material contributions to "development"

The introduction of a CSR clause in India's new Companies Act constitutes the second main CSR policy adopted by the central government. The conditions of production of this policy and the conception of CSR which it institutionalized depart from the NVGs on a number of points.

First, unlike the initial premises underlying the NVGs, which emphasized the superiority of global business-related CSR over Indian philanthropic CSR, the section 135 originated from actors whose view on CSR was deeply embedded in this Indian philanthropic approach. More precisely, the origin of the section 135 goes back to the mid-2000s, when major programs of rehabilitation and resettlement conducted by the public enterprise National Thermal Power Corporation (NTPC) were coming to an end. These programs comprised mainly local development initiatives implemented among village communities neighboring NTPC's power plants. To avoid conflicts with these communities, NTPC decided to continue providing peripheral development in the name of its social responsibility. This decision was picked up by the central government, which envisaged to extend CSR to all central public sector enterprises (CPSE). In the late 2000s, CPSE knew that the government would soon require them to spend part of their profit on such kinds of CSR activities, and they asked the government to impose a similar constraint on their private competitors.

In a context where CSR was increasingly considered by the government as a relevant policy option, this idea resonated favorably among the Union Cabinet and within the leadership of the Congress Party. In 2009, it was caught on by members of the Parliament (MPs), who were reviewing a Companies Bill that the MCA had introduced earlier in the law-making process in order to modernize corporate governance law in India. As the Standing Committee on Finance (SCF), a permanent parliamentary committee, was examining the bill, the idea emerged to recommend that the government adds a CSR clause in the legal text. Such clause would require companies to spend a

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[21] For instance, "businesses should communicate transparently and assure access to information about their decisions that impact relevant stakeholders," businesses should provide and maintain equal opportunities at the time of recruitment as well as during the course of employment irrespective of caste, creed, gender, race, religion, disability or sexual orientation," or "businesses should take measures to check and prevent pollution. They should assess the environmental damage and bear the cost of pollution abatement with due regard to public interest."

share of their net profit for CSR activities. This idea was welcomed by most members of the SCF, irrespective of their party affiliation.

A second difference between the two policy-making processes is that unlike the NVGs, the section 135 was crafted in the midst of India's parliamentary institutions through a process driven primarily by political calculations. Such political calculations motivated a large majority of the 31 members of the SCF to support the idea of mandating private companies to spend more for CSR. This strong support might reflect a certain conception of public interests. As explained by a parliamentary member of the SCF:

> *I have seen the amount of exploitation [of people and natural resources] going on, and the discontent of the people. Other MPs too. This is from where the initiative comes. [...] The country needs industry, and the local people need to be satisfied. Both have to function together. The balance has to be maintained* (a member of the SCF, September 2014).

But mandating private companies to increase CSR spending was also opening promising perspectives in terms of power politics. Indeed, CSR in India is not only a national issue, but also a regional and local one. Concretely, getting more companies to spend more money for local development projects would increase resources that MPs and their local affiliates can use for patronage. Patronage refers to candidates who obtain votes by promising to reward supporters, if they are elected, through the channeling of public resources extracted for instance from social welfare programs. The ability of candidates to convince voters in their respective constituency that they can be resourceful patrons is a strategic asset in Indian elections. **[22]** Peripheral development initiatives implemented by companies as part of their CSR programs are usually part of this patronage system: companies secure the support of elected representatives by letting them influence the allocation of CSR resources in their constituency, while elected representatives improve their popularity by displaying this influence in public, for instance during speeches in inauguration ceremonies of CSR-funded projects (Krichewsky 2012).

Political calculations also favored the positive reaction of the central government towards the proposal of the SCF. Policy-makers in favor of this measure argued that a greater involvement of the private sector in development initiatives would help India achieve the Millennium Development Goals. In a context of rising socio-economic inequalities, higher CSR spending would also help improve the perception of companies among the general public. **[23]** In a context where protest movements such as those against Tata Motor's car factory in West Bengal and Vedanta's bauxite mines in Odisha were "*on the minds of policy-makers*" (a senior bureaucrat of the MCA, September 2014), upscaling CSR was also expected to minimize such conflicts, which were hurting the investment climate of the country and the popularity of the government's pro-business development policies. The request of CPSEs were a further "*deciding factor*" in exchanges between the SCF and the MCA, as "*the argument became: if the public sector has to do it, so the private sector should do it as well*" (a member of the SCF, September 2014).

This constellation of political interests led the SCF and the MCA to officially agree in the summer 2010 that the section 135 of the Companies Bill may now require every company above a certain financial size to formulate a CSR Policy and to ensure that every year, at least 2 percent of its average net profit during the three preceding financial years are spent on CSR activities. **[24]** A "comply or explain" mechanism of

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[22] For an overview of patronage in India's democracy, see Corbridge, Harriss and Jeffrey (2013, chapter 8).

[23] "We have seen a big division in this country, the divide between the rich and the poor is getting bigger and bigger. It is about time that we do *a perception correction*. That can only be done if the companies themselves move forward and show that they are responsible, sensitive and they want to give back to the society" (Minister of Corporate Affairs, Parliamentary debate in the Lok Sabha on December 18, 2012. Our emphasis).

implementation was chosen, according to which companies that fail to comply with this requirement would need to provide "suitable reasons" in the report of the Board of Directors, which is attached to the yearly financial statement of companies.

A third difference between the NVGs and the section 135 is that while experts of the GDC limited interference from political and business actors in the making of the NVGs, in the section 135, it was politics that limited the interference of business actors and experts in the policy-making process.

The project of introducing a mandatory CSR clause in the Companies Bill triggered strong opposition from Indian business interest groups. During consultations organized by the SCF as part of its examination of the Companies Bill (2009), both the CII and FICCI argued that only voluntary CSR was appropriate, and that companies operating in India were already spending significant amounts in this domain. However, while business interest groups usually achieve to exert significant influence over the Indian law-making process, for instance by colluding with MPs (Hazra 2011), in this case, most members of the SCF were too interested in the political resources provided by the CSR clause to change their position. **[25]**

The MCA also refused to withdraw the proposed CSR clause from the bill. When business interest groups asked the government to make a tax instead of mandating large companies to spend 2 percent of their profit for CSR, the MCA replied: *"we look for corporate social responsibility, not for government social responsibility. That's what I told them: we do not want to make a new tax, we want you to do your projects, to give back to society, to take your responsibility"* (a senior bureaucrat from the MCA, September 2014).

However, the MCA was more receptive than most MPs to the pleas of business actors. While revising the Companies Bill (2009), which became the Companies Bill (2011), it tried to soften the terms of the CSR clause which had been agreed upon by the ministry and the SCF: the requirement that companies shall "ensure" to spend at least 2 percent of their average net profit on CSR became "shall make every endeavor to ensure". Beside the MCA's reputation of being rather receptive to concerns of private sector companies, its partial responsiveness towards the demands of business interest groups also reflects the central government's political interest in this matter. While the MPs were interested mostly in the material resources that a CSR spending requirement would provide for patronage, the central government was primarily interested in the symbolic resources such as policy could provide. By appearing to "mandate" large companies to invest more in the country's development, the government could display itself as a political authority that withstands the opposition of business interest groups for the benefits of the Indian people. The ambiguous formula "shall make every endeavor to ensure" could secure this symbolic resource, while giving companies leeway to determine how much they would actually spend for CSR.

The mandatory CSR policy also met with criticism and resistance from members of the GDC, who were working in parallel on the NVGs. They perceived the mandatory CSR clause as defeating the very purpose and potential of CSR, as they understand it: *"We were against the 2 percent, because what matters is how you make your profit, not how you distribute your profit"* (a member of the GDC, September 2014). Concerns were also raised about practical effects of the mandatory CSR clause. For instance, within large companies, CSR departments would be incentivized to focus on the spending of CSR budgets rather than on inducing changes in the core operations of their company, such as improving working conditions or designing eco-friendly products. Moreo-

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[24] Standing Committee on Finance (2010). The clause applies to companies having a net worth of ₹5 billion or more, a turnover of ₹10 billion or more, or a net profit of ₹50 million or more.

[25] *"To be very frank, some members of the Committee were in favor of voluntarism, and these members were those who have a direct or an indirect interest in the business of private companies. But they were a minority, maybe 7-8 members"* (a member of the SCF, September 2014).

ver, the management of small and medium enterprises might deduce from such a law that CSR is only relevant to large companies.

Members of the GDC tried to defend these positions within the MCA, but the ministry was now following another path, in which the NVGs had become a secondary concern. Evoking attempts to convince a senior bureaucrat of the MCA in charge of the section 135, a member of the GDC explained:

He has been avoiding me for the past five years. Anyway, the government has not discussed this CSR policy. They have elaborated it behind closed doors, with just a handful of experts to advise them (a member of the GDC, September 2014).

The GDC also asked the MCA to consider referring to the NVGs in the section 135. But the ministry refused to do so. Conversely, promoters of the CSR clause within the MCA saw the NVGs with a critical eye:

These other people from the former guidelines drafting committee, they come from a previous era. What they will tell you is that CSR and the NVGs were a broader framework than the CSR of the Companies Act, that CSR is now restricted to the 2 percent. But bringing CSR into the legislation, it is something very different. Here we talk about companies investing their money for the development of the country. Not principles, but actual money, rupees that you can count (a senior bureaucrat of the MCA, September 2014).

In short, opposition from business actors and CSR experts failed to derail or substantially alter the policy-making process, which moved forward as per the law-making procedures. The final version of the section 135 was negotiated in a debate that took place in the Lok Sabha, the lower house of Parliament, before the Companies Bill was put to a vote. Most MPs who intervened on CSR in the debate suggested that the law be strengthened. Propositions were made to increase the required CSR spending above 2 percent of net profit, to provide for the monitoring or even the steering of CSR spending by a dedicated administrative structure, and to replace the "comply or explain" mechanism with a clear binding mandate. But the Minister of Corporate Affairs argued in favor of the flexible comply or explain mechanism, while rejecting the idea of a direct oversight of companies' CSR spending by the government. **[26]**

In the end, the Companies Bill was passed with an amended section 135. The formulation "shall make every endeavor to ensure" introduced earlier by the MCA was replaced by "shall ensure", and a sentence was added which expects the CSR policy of each company to "give preference to the local area and areas around it where it operates." The section 135 was debated when the bill was put to a vote in the Rajya Sabha (the upper house of the Indian Parliament). But its formulation remained untouched, and on 29 August 2013, it became law as part of the new Companies Act.

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[26] "There were some suggestions made to us saying that this bill should be more stringent, corporates will try and get out of CSR [...]. My response to them was that the citizens in this country are as much Indians and want to improve this country. So, we must make the law in good faith hoping and assuming that their objective and the Government's objective is the same. [...] We believe that this is your country also. It is the corporates' and the companies' country also, and they, I think, are more than willing. So, they should be allowed to do the work that they want to do" (Minister of Corporate Affairs, Parliamentary debate in the Lok Sabha on December 18, 2012).

4.3. The common voluntaristic core of the NVGs and the section 135

A systematic comparative analysis of the NVGs and the section 135 reveals significant variations as to how India's political system exploited the meaning horizon opened up by the CSR concept in these two policy initiatives. Depending on the conditions of production of these two policies, and the underlying constellations of interests and power relationships, CSR was selectively associated with different distinctions such as about profitability, the thematic scope of CSR activities, or the degree of autonomy or constraint with which companies can design their CSR programs. These meaning-generating processes resulted in the production of different regulatory structures. However, the comparative analysis also reveals a series of commonalities, which have consequences in terms of how these CSR policies are set to impact the regulatory power of the Indian state.

With regard to the material dimension of meaning, the NVGs associate CSR with p*rofit-generating* business operations, which would be "socially responsible" inasmuch as companies "integrate" and "embed" the guideline's principles in their "core business processes" (Ministry of Corporate Affairs 2011: 27). Conversely, the section 135 associates CSR with the *redistribution of profit* through the funding of development-related activities. The CSR Rules (2014), which provide legally-binding indications regarding the implementation of the section 135, stipulate that CSR is "excluding activities undertaken in pursuance of [a company's] normal course of business", and that "the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company."

However, this does not preclude indirect economic benefits, which are put forward in both public policies. The NVGs claim that implementing the guidelines will "improve the ability of businesses to enhance their competitive strengths, improve their reputations, increase their ability to attract and retain talent and manage their relations with investors and society at large" (Ministry of Corporate Affairs 2011: 6). Moreover, the NVGs provide management tools to help companies identify how they can derive economic value out of CSR, and shape their CSR strategy accordingly. Similarly, while addressing business executives in a filmed debate that followed the adoption of the Companies Act, the Minister of Corporate Affairs emphasized that the section 135 will "make sure that people in India believe that corporates are not just there looking at bottom lines and quarterly profits, but that they are also concerned with the situation in which these people are living", and that this "good will" would pay back, also in economic terms. **[27]**

A further point of comparison in the material dimension of meaning is the thematic scope of issue-areas related to CSR. In the NVGs, the issue-areas distinguished in the list of 9 principles are rather connected to business operations. They comprise themes such as ethics, transparency and accountability, the environmental quality of goods and services, the wellbeing of employees, human rights, inclusive and equitable development, and environmental protection. For the section 135, the Schedule VII of the Companies Act indicates development-related areas in which companies are expected to implement CSR activities, such as poverty alleviation, the promotion of education, gender equality, rural development, the promotion of heritage, and environmental sustainability. However, in both cases, the thematic scope of CSR is

[27] The Minister Sachin Pilot speaking at the occasion of a Google Hangout organized in August 2013 by NextGen and CNBC TV18: https://www.youtube.com/watch?v=i-boKITJ-7U (sourced on 22 August 2014).

defined in such broad and open terms that companies can use CSR to address most societal problems that are of strategic relevance for the development of their business performances and prospects.

With regard to the social dimension of meaning, both policies differ in terms of *who* between the public regulator and companies is to control what companies do in terms of their "social responsibility". The NVGs contend that "if a business endeavors to function responsibly, it would have to adopt each of the nine (9) principles in their entirety rather than picking and choosing what might suit them" (Ministry of Corporate Affairs (2011: 5). But the *voluntary* guidelines remain "not prescriptive in nature", and they only "urge" companies to take the guidelines into consideration (Ministry of Corporate Affairs (2011: 6). Moreover, the management tools which are provided explicitly intend to help each company identify which of the guideline's components are relevant for it in terms of CSR's "business case". On the contrary, the section 135 is presented as a "mandatory" CSR policy, which is integral part of India's positive law.

However, the section 135 also gives significant discretions to companies. First, the "comply or explain" mechanism provides companies with the possibility to choose the extent to which they want to comply, as long as they provide some sort of justification: only the absence of any justification exposes a company to sanctions. The MCA justified this flexibility by explaining that it was acting "in good faith, hoping and assuming that [the corporates'] objective and the Government's objective is the same" (Minister of Corporate Affairs, Parliamentary debate in the Lok Sabha on December 18, 2012). Secondly, the section 135 lets companies choose what CSR projects and programs they want to conduct. While it indicates a preference for projects located near the production units of companies, companies can deviate from this preference. Moreover, while the Schedule VII indicates issue-areas that companies should consider, the CSR Rules state that "CSR means and includes but is not limited to" the Schedule VII and companies' official CSR Policies. As emphasized by the Minister for Corporate Affairs:

> It is not up to me to say this is CSR or this is not CSR. It is up to the Board of the company, how they want to use the fund. [...] It is not a tax, a cess that companies have to pay to the government. We are only urging companies to spend their own money in the areas they feel most comfortable with through the agencies they are familiar with (Ibid.).

Both CSR policies also present differences with regard to the temporal dimension of meaning. The NVGs conceive of CSR as a forward-looking movement which both generates and realizes opportunities of synergies between successful business development, social welfare and environmental sustainability. In this perspective, the guidelines encourage and support companies to "self-steer and regulate their journey towards becoming sustainable and responsible businesses" (Ministry of Corporate Affairs (2011: 6). The section 135 is more oriented towards the present. The Companies Act entails a date when the section 135 entered into force, and the section 135 aims at getting companies carry out CSR projects and programs that should make immediate contributions to the country's development. However, from the point of view of the public policy-maker, such contributions were means to attain the same forward-looking objective as for the NVGs: enhance the popularity of its pro-business development policies by steering public opinion towards a more positive perception of business-development relationships.

The differences characterizing the NVGs and the section 135 notwithstanding, the commonalities outlined above have consequences regarding the institutional impact of these two CSR policies on the regulatory power of the Indian state.

At a functional level, both policies aim to transfer a broad and flexible array of societal problem-solving functions to companies. In the case of the NVGs, these functions are mostly regulatory: the guidelines even entail a table that shows how the various principles correspond with India's legally-binding regulatory framework. Formally, the guidelines *"assume* that compliance with the laws of the land is necessary for a business to operate, and this is non-negotiable" (Ministry of Corporate Affairs 2011: 28, our emphasis). But this CSR policy was conceived by the government to palliate the deficient enforcement of legally-binding regulations (see section 3.2). The section 135 rather transfers redistributive functions to companies. Here as well, public authorities emphasized the complementary character of such transfer. According to the Minister for Corporate Affairs, *"not for a second should anyone believe that the government is abdicating its responsibility, that it will not make roads, schools and electricity."* [28] Nonetheless, this policy uses a CSR spending requirement rather than a tax to transfer part of the wealth generated by companies to beneficiaries of development projects and programs. In short, while both the NVGs and the section 135 formally aim to supplement existing state-based regulations and social policies, they address the insufficiencies and deficiencies of these regulations and social policies by putting companies in charge.

While doing so, at an operational level, the two policies provide significant discretion to companies regarding the exercise of these regulatory and redistributive functions. The NVGs encourage companies to become full-fledged "responsible businesses", but companies are also encouraged to conceive of CSR as a "business case", and to consider societal issues such as labor welfare, human rights and environmental sustainability accordingly. While the section 135 is more restrictive in terms of organizational and financial means that companies are expected to mobilize, it also leaves companies free to determine the extent of their involvement and the societal problems they want to address on the basis of their own strategic priorities.

Such autonomy does not mean that India's political system renounced to influence the CSR behavior of companies. As interviews with CSR executives of large Indian companies indicate, the adoption of the section 135 did impact CSR within companies, as the core mission of the companies' CSR departments was refocused on how to spend the CSR budget. [29] Moreover, it is likely that a number of elected representatives will continue to be in a position to influence the CSR spending of companies as part of their local strategies of patronage (for instances see Krichewsky 2014 and Varman and Al-Amoudi (2016). However, unlike state-based social welfare systems, the normative constraints imposed by the political system on the CSR behavior of companies remain flexible, and they allow companies to decide for what the CSR budget will be spent–including for securing the support of elected representatives, which is a strategic resource for profit-driven business development in the Indian context.

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[28] The Minister Sachin Pilot speaking at the occasion of a Google Hangout organized in August 2013 by NextGen and CNBC TV18: https://www.youtube.com/watch?v=i-boKITJ-7U (sourced on 22 August 2014).

[29] This effect of the section 135 was reported by four CSR executives whom we interviewed in September 2014. Data that would cover more companies over a longer period of time would be required to produce a robust analysis of the effects of the normative structures introduced by India's recent CSR public policies.

5. CONCLUSION

In view of the increasing number of CSR public policies adopted by state authorities, "we are, paradoxically, seeing government operate inside the sphere of corporate self-determination" (Vallentin and Murillo 2012: 827). This paradox raises the question of how such CSR public policies contribute to transforming the respective roles of state authorities and private business actors in the regulation of corporate conduct and the redistribution of resources for social welfare. The comparative analysis of two Indian CSR public policies, the NVGs and the section 135, provided opportunities to explore this paradox.

The variety of CSR public policies displayed in the literature suggests that this question cannot receive a straightforward answer. Depending on the conditions of production of these public policies, and the underlying constellations of interests and power relationships, some policies allow state authorities to exert constraints on the CSR behavior of companies, while other policies just endorse or facilitate companies' primarily profit-driven CSR practices. Using an analytical framework based on social systems theory, the paper contributes to developing this line of research by taking the semantic dimension of CSR into account. Doing so introduces a new perspective in the study of CSR public policies: *while most of the literature looks at how the regulatory interventions of state authorities can impact CSR, integrating the semantic dimension in the analysis enables to also look at how the CSR concept impacts the regulatory interventions of public authorities by providing peculiar policy options*. Building on this perspective of an interplay between CSR and the political regulation of corporate conduct, the comparative analysis of the NVGs and the section 135 produced three interrelated contributions.

First, the study shows that the semantic properties of the CSR concept *precondition* the variety of CSR public policies. Indeed, the CSR concept opens up a horizon of potential meanings which is wide and flexible with regard to its thematic scope (material dimension of meaning), to the articulation of government and corporate responsibilities (social dimension of meaning), and to the time frames in which solutions can be envisaged to tackle societal problems (temporal dimension of meaning). As no consensus has successfully narrowed down and stabilized a meaning of CSR from within this vast array of possibilities, political systems that seize the attractive policy options opened up by CSR must reflectively circumscribe which "social responsibilities" of companies they are referring to. In other words, the semantic openness of the CSR concept makes the outcomes of CSR policy-making processes highly contingent. This contingency is particularly visible in the Indian case, where in spite of being located in a similar political-economic context, two distinct policy initiatives gave diverging meanings to CSR. Produced in a deliberative setting dominated by experts, the NVGs are mostly rooted in the global CSR doxa. The guidelines associate CSR with issue-areas that are directly connected with companies' core business processes. They also emphasize the voluntary character of CSR, and they attribute the problem-solving potential of CSR to it being a promising movement of convergence between profit-making, social welfare and environmental sustainability. Produced in a parliamentary setting dominated by the central government and MPs, the section 135 of

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the Companies Act is rather rooted in India's philanthropic tradition. It associates CSR with issue-areas that are only indirectly connected with companies' core business processes. Unlike the NVGs, it defines CSR in terms of quasi-mandatory obligations, and it attributes the problem-solving potential of CSR to the redistribution of profit in non-profit development projects and programs.

Second, the study shows that in spite of the variety outlined above, the semantic properties of the CSR concept also induce commonalities in CSR public policies. More precisely, the CSR concept provides attractive resources to public policy-makers, but using these resources requires policy-makers to stay within certain common parameters.

With regard to the material dimension of meaning, the wide and flexible scope of CSR enables state authorities to address in one stroke a large number of wicked and multifaceted societal problems. Using this resource leads policy-makers to design CSR policies whose regulatory expectations towards corporate conduct remain general and flexible, if not vague. In the Indian case, both the NVGs and the section 135 cover broad and blurry issue-areas, in which companies can choose strategically which problems they want to address and which problems they want to leave untouched.

With regard to the social dimension of meaning, CSR offers opportunities for state authorities to relieve some political pressure by transferring or sharing responsibilities for societal problem-solving with companies. Using this resource leads policy-makers to design CSR policies that avoid hard constraints, as such constraints would require enforcement mechanisms that increase rather than lower the burden of state authorities. In India, both the NVGs and the section 135 emphasize the responsibility of *companies* in areas where the state describes itself as insufficient and/or deficient, and both policies avoid bureaucratic enforcement mechanisms based on monitoring and sanctions.

Finally, with regard to the temporal dimension of meaning, state authorities are interested in the ability of CSR to promise a convergence between profit-making and the common good, as such promise might attenuate social tensions and conflicts that are costly not only economically, but also politically. Using this resource leads policy-makers to design CSR policies that legitimize profit-making by defining it as an engine of societal problem-solving. In India, while the NVGs point to a movement that can harmonize profit-making, social welfare and environmental sustainability, the section 135 defines profit-making as a source of corporate contributions to the country's development.

Third, building on this analysis, the paper offers a description of CSR public policies that captures both their variety and their commonalities. At a functional level, CSR public policies can more or less forcefully involve companies in the performance of various regulatory and redistributive problem-solving functions, which are more or less connected with the core business processes of firms. But at the operational level, CSR public policies remain highly flexible with regard to *how* companies are to perform these political functions. Moreover, they avoid imposing constraints that would hurt profit-making, as profit-making is defined in these policies as a positive source of societal problem-solving.

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In view of these findings, it seems 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. It follows that both business-supportive and business-constraining CSR public policies can be compatible with a broader "corporate colonization of government" (Wilks 2013: 253, see also Banerjee 2008, Hanlin 2008, Fleming and Jones 2013).

However, assessing the concrete impacts of CSR public policies on the regulatory power of state authorities requires further empirical research, including through cross-national comparative studies. Indeed, CSR public policies are not without consequences for the CSR behavior of companies, and understanding these consequences necessitates in-depth study on the policies' concrete modalities of implementation and outcomes. In the Indian case, for instance, the impact of the section 135 on the CSR practices of companies, including through national and local political interferences, remains to be seen. Besides, assessing the concrete impacts of CSR public policies on the regulatory power of states requires to investigate how these policies affect other forms of regulatory intervention, such as the making and implementation of labor and environmental laws. More indirect links also need to be considered, as the regulatory impact of CSR public policies involves relationships between companies and social movements. For instance, it is still unclear whether the funds generated by the section 135 will amplify the "de-radicalization" and cooptation of Indian protest movements through CSR, **[30]** and how such de-radicalization might impact regulatory politics in India's democracy.

Advancing research in these directions would also provide insights into the consequences of CSR public policies for democracy. The analysis of the shift "from government to governance" as a mutation of the symbolic order of democratic societies opens up perspectives in this regard. **[31]** Following Matthias Lievens, the rise of collaborative governance has consequences that are far from being just "symbolic". By transforming key features of democracy, such as equal citizens (replaced by "stakeholders"), electoral competition for power (replaced by "collaboration" and "partnerships") and state sovereignty (replaced by issue-based "governance networks"), governance hampers the democratic expression and processing of conflict in society. CSR public policies seem to directly participate in this trend (see Jacobsson and Garsten 2012). Examining empirically how these policies contribute to hindering the democratic processing of conflicts opposing profit-making and competing collective interests in society seems to be a research agenda worth pursuing.

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[30] On the use of CSR by companies to de-radicalize and coopt civil society actors, see for instance Shamir (2004), Burchell and Cook (2013), and on the Indian case, the study of CSR and violence in an Indian plant of Coca Cola by Varman and Al-Amoudi (2016).
[31] This shift is conceived of as a transition from "the exercise of power within a state context, based on principles such as sovereignty, territoriality, and citizenship" (government) to "new modes of steering and regulating society" characterized by "networks of public and private actors that are involved in tackling concrete problems, but that lack coercive power" (governance) (Lievens, 2015, p. 2).robust analysis of the effects of the normative structures introduced by India's recent CSR public policies.

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ABOUT THE AUTHOR

Damien Krichewsky combines political sociology, economic sociology and sociology of organizations to study transformations of state-business relations in contemporary India. His research focuses in particular on how interplays between profit-driven economic activities and competing collective values and interests are observed and processed in India's democracy.

In January 2014, Damien Krichewsky joined the FIW, where he has been pursuing new theory-driven empirical research on state-business relations in India's democracy. A first project, which is now completed, has investigated how the semantics of CSR have penetrated India's political system in the mid-2000s, and provided state authorities with new policy options to intervene on „business-development" interplays.

As part of his new research agenda, Damien Krichewsky has started working on environmental politics in India's democracy. A research project on this topic is currently under review for funding by the Deutsche Forschungsgemeinschaft (DFG). Based on a macro-sociological study and in-depth field research, this project will examine ongoing restructuring processes that are reconfiguring the roles of i. state-based „command & control" regulation, ii. judicial activism, iii. environmental protest movements, iv. private and public-private governance systems, and v. expert-based „scientific" management in the political processing of environmental problems. Each of the five aforementioned sources of environmental governance are characterized by distinct structures of political inclusion and decision-making. By analyzing the shifting roles of these governance sources in India's environmental politics, the project will develop new insights into how structures of political inclusion and decision-making condition the selective responsiveness of India's democracy to environmental problems.

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FIW WORKING PAPER

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Autor: Rudolf Stichweh
Datum: September 2015
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ISBN: 978-3-946306-01-6

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Datum: März 2017
ISBN: 978-3-946306-05-4