CAPTIVE PHILANTHROPY

“Statutory Design, Corporate Governance, and the Democratic Deficit in India's Mandatory CSR Regime”

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Abstract

Section 135 of the Companies Act, 2013 does something quietly contradictory. It forces qualifying companies to redirect profit toward public welfare, and in the same clause leaves those profits free to stay under corporate control. This paper argues that the contradiction was not missed by the drafters, it was left in place. Rule 4(1)(a) of the CSR Rules expressly allows a company to route its mandatory two percent spend to a Section 8 foundation that it has itself created and staffed, and the 2021 Amendment, which rewrote nearly every other compliance detail in the regime, left that permission exactly where it was. That is not an oversight. It is a decision, and this paper sets out to prove it rather than simply assert it. Applying a governance overlap mapping protocol to five NSE-listed conglomerates for FY 2024-25, the paper finds fund concentration of 90-100% across all five, and four of the five implementing foundations without a single independent trustee. Three things follow. Theoretically, the paper extends the tunneling framework into the public welfare domain and proposes welfare tunneling as its own analytical category. Doctrinally, it names captive philanthropy as a legal concept and separates out inverted circular ownership as a structurally distinct variant. And as remedies, it argues for treating captive CSR transfers as deemed related party transactions under Section 188, for mandating independent trustee quotas on recipient foundation boards, and for a public governance overlap register run by the Ministry of Corporate Affairs.

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I. Introduction

I.A The Structural Paradox

A law meant to push corporate wealth out toward public welfare has, in practice, built a legal mechanism for keeping that wealth exactly where it started. Section 135 requires qualifying companies to spend two percent of average net profits on social welfare, but it says nothing about who is allowed to govern the entities that end up holding that money. What this paper finds, working through five of India's largest family conglomerates for FY 2024-25, is a pattern this paper calls captive philanthropy: the obligation to spend, the power to decide where it goes, and the reputational credit for spending it all sit inside the same corporate family. None of that happens by accident. It happens because the statute allows it to.

I.B The Statutory Architecture

The mechanism behind this is not vague or hard to trace. Rule 4(1)(a) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 does more than stay quiet on governance independence, it actively permits companies to send their mandatory CSR money to Section 8 entities that they themselves set up. The 2021 Amendment tightened administrative compliance considerably: CSR1 registration became mandatory, unspent fund rules got stricter, and non-compliance was made a criminal matter. What the amendment never touched, at any point, was the governance relationship between the donor company and the foundation receiving its money. When a legislature runs a full overhaul of a regime and pointedly leaves one structural question untouched, that silence is doing work. It is not an accident (Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021). No prior scholarship has argued that this silence amounts to authorisation. That is the argument this paper makes.

I.C Three Contributions

Three contributions come out of this. The first is doctrinal: read together, the statute's silence on arm's length dealing, Rule 4(1)(a)'s explicit permission for self-routing, and the 2021 Amendment's demonstrated unwillingness to touch governance insulation, add up to legislative authorisation rather than legislative omission. The second is theoretical: this paper takes Bertrand, Mehta, and Mullainathan's (2002) tunneling framework, built originally around shareholder harm, and extends it into the domain of mandatory public welfare obligations, producing what this paper calls welfare tunneling. The third is empirical: applying the governance overlap mapping protocol to five NSElisted family conglomerates turns up governance capture across the board, and in the Tata and Wipro cases, a structurally distinct pattern this paper names inverted circular ownership, one with no real comparative analogue.

I.D Structure of the Argument

Section II works through the existing scholarship in four clusters and marks out where none of it has gone. Section III lays out the combined method. Sections IV and V do the empirical and analytical work, across four connected moves. Section VI turns the findings into legal remedies and states what the paper adds to the field.

II. Literature Review

Section 135 made India the first major economy to legally require corporate welfare spending, forcing qualifying companies to put two percent of average net profits into Schedule VII activities. The intent was redistributive. What actually happened was something else. A decade of scholarship has studied how firms responded to the mandate, but it has largely skipped a more basic question: once the money leaves the listed company, who actually controls it, and through what kind of structure? Family-controlled conglomerates route their mandatory CSR funds into Section 8 companies that they establish and run themselves, using Rule 4(1)(a) of the CSR Rules to do it. No existing study treats that structure as a single, connected phenomenon worth naming. This review works through four clusters of relevant scholarship and points to where they all, collectively, stop short.

II.A Scholarship on the Mandatory CSR Framework

Legal scholarship on this has grown considerably since the 2019 and 2021 amendments turned Section 135 from a comply-or-explain rule into one with real financial penalties attached. Mudgal (2026) and Paul and Lone (2025) both track this tightening and land on the same uncomfortable point: the reforms that shut down old loopholes ended up formalising new ones. The 2021 CSR Amendment Rules recognised Section 8 companies as valid implementing agencies while leaving board-level discretion over where the funds go completely intact. Paul and Lone (2025) describe the compliance that follows as procedural rather than substantive, committees get formed, disclosures get filed, but nobody independently checks whether the money actually did anything. Sharma and Chakrabarti (2023) mapped the administrative rules around unspent CSR accounts without ever asking how Rule 4(1)(a) sits against related-party scrutiny under Sections 184 and 188 of the Companies Act. That is roughly where the existing legal literature runs out.

II.B Corporate Governance and the Tunneling Literature

Underneath all of this is the principal-principal problem: in economies where ownership is concentrated in family or state hands rather than spread across many shareholders, the real governance conflict is between controlling and minority owners, not between managers and owners the way classical agency theory assumes (Young, Peng, Ahlstrom, Bruton, and Jiang, 2008). Bertrand, Mehta, and Mullainathan (2002) took that problem and showed what it looks like in practice in India, business groups tunneling earnings through inter-corporate channels to benefit controlling shareholders at the expense of minority ones. Dharmapala and Khanna (2018) pushed this further with a regression discontinuity design around the Section 135 thresholds, and found that controlling promoters absorb only a fraction of the CSR cost while keeping all the reputational upside for themselves. Varottil (2019, 2021) has traced the structural weak points in how family conglomerates hold governance control under Indian corporate law more broadly, and Kumar and Singh (2023) found something that fits right alongside that: in firms with high promoter shareholding, centralised CSR decisions line up with drops in operating performance, which looks a lot more like extraction than genuine welfare choice. Rajan (2025), looking specifically at NSElisted conglomerates, documented related-party CSR routing and inflated implementation costs. What none of this literature actually examines is the Section 8 captive foundation as its own organisational architecture, the specific structure through which control gets exercised. Nobody has applied the tunneling framework to mandatory public welfare obligations as a category in its own right. Moving a CSR obligation out of the public welfare sphere and into the corporate governance sphere is analytically different from ordinary shareholder-domain tunneling, and this paper builds that category and applies it empirically, for what appears to be the first time.

II.C Comparative Governance Frameworks

The UK Charity Commission's arm's length guidance (Charity Commission for England and Wales, 2023), the US Internal Revenue Code's self-dealing prohibitions under Section 4941 (Internal Revenue Code, 26 U.S.C. Section 4941, 2018), and South Africa's B-BBEE mandatory spending governance all show that governance insulation between a donor corporation and its implementing foundation is a real legislative choice, one that other jurisdictions have made through specific and identifiable statutory mechanisms. Ioannou and Serafeim (2017), looking at mandatory sustainability reporting across China, Denmark, Malaysia, and South Africa, found governance improvements wherever independent verification was built into the mandate. India's framework lacks exactly those features. What this comparative literature does not do is treat a mandatory welfare obligation as structurally different from voluntary philanthropy. But the mandatory character of Section 135 spending changes the nature of the governance gap, it stops being a matter of corporate preference and becomes a question of constitutional accountability. That distinction underpins the democratic deficit argument in Section V.B. Thakur-Wernz, Wernz, and Bhatt (2026) are useful here too: their study of family ownership and above-mandatory CSR behaviour shows that CSR committee composition mediates the relationship between family control and social spending outcomes, which is exactly the mechanism this paper argues is being captured.

II.D The Analytical Gap This Paper Occupies

This paper sits in three gaps at once. First, it proves authorisation rather than simply pointing at existence. Saying "captive philanthropy exists" is a different kind of claim from saying "captive philanthropy is authorised," the second is an analytical contribution that changes how the law itself should be read, not just a description of what happens. Second, it extends tunneling theory into the public welfare domain, building an analytical category with direct regulatory consequences. Third, it names and separates out inverted circular ownership as its own category, one with no comparative equivalent that this paper has found.

III. Methodology

III.A Doctrinal Component: Purposive Statutory Interpretation

The doctrinal work follows McKerchar's (2008) framework for legal research conducted within a social science setting, tracing legislative intent through the Parliamentary Standing Committee Report on the Companies Bill, 2011 (Standing Committee on Finance, 2012) and the Statement of Objects and

Reasons of the Companies Act, 2013 (Ministry of Corporate Affairs, 2013). This is the point at which the obvious objection, that silence is just an oversight, needs to be answered head on, and the Committee's own 2012 report gives the material to answer it. The Committee did not leave the CSR clause alone. It went into clause 135(5) directly and recommended replacing the phrase "shall make every endeavour to ensure" with the firmer "shall ensure," and it went further still, recommending that CSR activities be tied to the area a company actually operates in (Standing Committee on Finance, 2012). That is not a legislature skimming past a clause on the way to somewhere else. That is a Committee sitting with the CSR provision line by line, tightening its language and drawing a geographic boundary around it, and at no point in that process did it ask the separate question of who actually governs the foundation once the money has left the company. The argument here turns on that specific gap, not on silence taken in the abstract. Parliament was clearly capable of granular intervention on this exact clause, and chose not to extend that intervention to donor foundation governance. The UK Charity Commission's arm's length guidance (Charity Commission for England and Wales, 2023) and the US Internal Revenue Code's self-dealing prohibitions under Section 4941 (Internal Revenue Code, 26 U.S.C. Section 4941, 2018) serve here as the benchmark against which that omission is measured. The 2021 Amendment is treated the same way, as primary evidence rather than background: a reform detailed enough to fix unspent fund transfer deadlines, but silent on donor foundation governance, is not a reform that simply forgot to look. Set next to the 2012 Committee's own willingness to rewrite clause 135 word by word, the 2021 silence reads less like an oversight and more like a choice.

A note on the central interpretive claim is worth adding here. The argument that post-2021 silence amounts to affirmative authorisation, rather than mere non-engagement, will draw the objection that silence can just as easily reflect the legislature simply not having considered the point. This paper takes that objection seriously and answers it directly. The 2021 Amendment did not quietly skip over governance, it actively reformed nearly every adjacent administrative question, from how unspent funds are treated to criminalising non-compliance. A legislature capable of that level of detail on the questions around governance, while leaving the actual separation between donor and recipient untouched, is not failing to notice the issue. It is declining to answer it in the direction of restriction.

There is a more precise anchor for this than an inference drawn from what the amendment chose not to do. The Committee's own account of what it called "enhanced accountability" is on record in the report itself: alongside the Audit Committee and the Nomination and Remuneration Committee, the report describes a Corporate Social Responsibility Committee of the Board whose members were expected to include independent or non-executive directors, specifically to strengthen board functioning and protect minority-shareholder interests (Standing Committee on Finance, 2012, Salient Features Section 3.1(iii)(b)). The Statement of Objects and Reasons attached to the Bill describes the same CSR Committee proposal in materially identical terms (Ministry of Corporate Affairs, 2013), so both documents that most directly evidence legislative intent agree on where the independence requirement was actually placed. That is

Parliament, in its own words, tying board-level independence to the CSR function, but tying it exclusively to the composition of the donor company's own CSR Committee, never to the composition of the Section 8 entity or trust that ends up receiving and controlling the money. The same report also shows the Committee was perfectly willing to override a suggestion for tightening an adjacent CSR safeguard when it thought the suggestion went too far: asked to require CSR-implementing bodies to develop the area within a fixed one-kilometre radius of the donor company, the Ministry's response, reproduced in the report, rejected a rigid geographic mandate on the ground that it would disadvantage remote and backward areas more in need of the spending, treating the CSR provisions as drafted as an adequate balance of the competing interests raised before the Committee (Standing Committee on Finance, 2012, Statement of Suggestions at Sl. No. 59, Cl. 135). Every recorded instance in which the Committee engaged with a governance-adjacent CSR question, independence on the CSR Committee, the geographic reach of spending, produced an explicit textual response, one that endorsed, qualified, or declined the suggestion on the record. The donorrecipient governance relationship produced no such response, in either direction. Where the legislative record shows engagement everywhere else and silence only on this one structural question, that asymmetry is evidence in itself, not merely an absence from which evidence has to be inferred.

III.B Empirical Component: Governance Overlap Mapping Protocol The governance overlap mapping protocol is adapted from Bertrand et al. (2002), though it needed real reworking to fit legal structures outside the ordinary corporate form, Section 8 entities and registered public trusts, which do not produce the shareholding disclosures the original protocol was built around. Sample selection rested on two criteria, both fixed before any governance coding started, precisely so the sample would not be built to presuppose the pattern the paper set out to test. The first was continuous satisfaction of the Section 135 spending threshold across three financial years, not just one. The point of that window was to exclude companies whose CSR obligation was really a one-off consequence of a temporary spike in net worth, turnover, or profit; three years is not an arbitrary cut-off either, it mirrors the statute's own three-year averaging convention for net profit under Section 198, and it screens out firms whose relationship with a captive foundation would not yet have had time to settle into an observable pattern. The second criterion was an active public CSR-1 registration for at least one Section 8 entity or registered public trust receiving CSR transfers from the company. That mattered because CSR-1 registration is the only field-verifiable, MCA-published marker confirming that a given implementing agency is currently authorised to receive a company's CSR funds, which makes the recipient entity identifiable and its governance record traceable independently of however the company's own annual report chooses to describe the relationship. Governance overlap itself, whether the recipient entity's board or trustee body includes company directors or promoter family members, does not appear in either criterion, and that was deliberate. It was withheld from the selection stage and coded only once the five-company pool had already been fixed on the two criteria above, so in this study it functions as a measured outcome, not a screening condition. A sample selected on the presence of governance overlap would have made the paper's central finding true by construction rather than by evidence.

Data came from MCA21 filings including MGT-7, CSR-2, and AOC-4 forms (Ministry of Corporate Affairs, 2024-25a), integrated annual reports for FY 2024-25, foundation annual reports, and the National CSR Portal (Ministry of Corporate Affairs, 2024-25b). Four variables were coded for each company, each measured against a specific threshold rather than left as an unscaled description. Fund concentration ratio, the share of total CSR expenditure routed through the single largest recipient foundation, was calculated as that foundation's disclosed receipts divided by the company's total reported CSR-2 expenditure for FY 2024-25; anything at or above 90% counted as full concentration, consistent with the 90-100% range reported in Table 1. Board composition overlap, the proportion of foundation board or trustee seats also held by a company director or a member of the promoter family, was calculated as the count of overlapping seats divided by total board or trustee strength, as disclosed in the foundation's own annual report or trust deed filing. Promoter presence was recorded more simply, as a yes or no: whether a named promoter family member sits on the foundation's governing body in any capacity, cross-verified against both the foundation's disclosed governing body list and the company's MGT-7 promoter disclosure. Independent trustee count, finally, tallies trustees with no financial or familial tie to the promoter family against the total board size. These four measures were then combined into the governance assessment reported in Table 2. Where promoter presence was recorded yes, independent trustee count was zero, and no equity relationship ran from the foundation back into the donor company, the case was coded "full capture." Where the foundation or trust additionally held a direct equity stake in the donor company, the inverted circular ownership pattern documented separately in Section IV.C, the case was coded "constitutive capture" regardless of the exact board-overlap or independent-trustee figures, since an ownership relationship dissolves the donor-recipient distinction those other measures are designed to capture. That is why Tata Consultancy Services is coded constitutive capture in Table 2 despite its partial board-overlap and independent-trustee figures, which reflect Tata Trusts' larger and more institutionalised trustee body rather than an absence of control. Reliability between the two coders was measured at Cohen's Kappa of 0.81 (Cohen, 1960), indicating substantial agreement; the second coder is identified in the supplementary materials, which also include the full coding instrument.

III.C Methodological Necessity and Limitations

Quantitative analysis on its own could not identify a governance conflict of interest. Legal analysis on its own could not measure the scale of fund concentration. It took both together to show that statutory silence was being exploited systematically, across five independent corporate ecosystems, turning a doctrinal observation into an evidenced claim. The five cases were chosen purposively, and the findings establish that systematic governance capture is a documented, recurring structural feature of India's CSR architecture, not a claim about every company in the country. Informal family influence is also not fully capturable through formal directorship records, a limitation acknowledged where it matters in the findings below.

IV. Empirical Findings

IV.A Pattern 1: Universal Fund Concentration

Across all five conglomerates studied, mandatory CSR expenditure ran almost entirely through foundations, trusts, or Section 8 entities that share direct governance or ownership links with the donor corporation. Reliance Industries put its entire FY 2024-25 CSR obligation of Rs. 2,156 crore into the Reliance Foundation, chaired by Nita M. Ambani and governed by directors drawn from the Ambani family and senior company leadership. Wipro channelled over 95% of its CSR spend through the Wipro Foundation ecosystem, the institutional vehicle of founder Azim Premji and his family. Mahindra and Mahindra routed over 90% of its Rs. 235.1 crore obligation through the K.C. Mahindra Education Trust and the Mahindra Foundation, both chaired by or closely tied to Anand Mahindra. Bajaj Auto sent the majority of its Rs. 164.5 crore obligation through the Jamnalal Bajaj Foundation and related family-controlled trusts, whose trustees are entirely direct descendants of the founding family. Tata Consultancy Services deployed the majority of its CSR obligation through Tata Trusts and the TCS Foundation, a case handled separately in Section IV.C, because it does not fit the same mould as the other four.

Table 1: CSR Fund Routing Through Captive Foundations (FY 2024-25)

Company	Primary Implementing Body	CSR Expenditure (Rs. Crore)	Routing Through Captive Entity
Reliance Industries	Reliance Foundation	2,156	100%
Tata Consultancy Services	Tata Trusts / TCS Foundation	960	Majority
Mahindra and Mahindra	KCMET / Mahindra Foundation	235.1	Above 90%
Wipro	Wipro Foundation	226.5	Above 95%
Bajaj Auto	Jamnalal Bajaj Foundation	164.5	Majority

Source: MCA21 filings (MGT-7, CSR-2, AOC-4), integrated annual reports FY 2024-25, National CSR Portal (Ministry of Corporate Affairs, 2024-25b).

The convergence across this sample matters. These five conglomerates work in different industries, come out of different ownership histories, and have grown different corporate governance cultures over time. Despite all of that, every single one landed on a structurally identical CSR implementation arrangement. That looks like a uniform response to the same statutory incentive: Rule 4(1)(a)'s explicit permission to self-route, paired with the absence of any requirement to keep governance separate. IV.B Pattern 2: Universal Governance Capture In four of the five cases, the boards or trustee bodies running the implementing foundations had no independent external members at all, no trustees or directors without either a concurrent role at the donor corporation or a direct family tie to the promoter group. At Reliance Foundation, Nita M. Ambani chairs the body, and its governance includes members of the Ambani family alongside senior Reliance Industries executives. At the K.C. Mahindra Education Trust, Anand Mahindra chairs the trust and his spouse sits as co-trustee, with no independently appointed external member anywhere on the governance body. At the Jamnalal Bajaj Foundation, every trustee is a direct family member or descendant of the Bajaj founding family that controls the listed entity. At Wipro Foundation, Azim Premji chairs the implementing structure while his son, Rishad Premji, serves as Executive Chairman of both Wipro Limited and the Premji Philanthropic Group, which collapses the boundary between corporate governance and foundation governance into a single family line.

Table 2: Governance Overlap Between Donor Companies and Implementing Foundations

Company	Foundation Chair	Promoter on Board	Independent Trustees	Governance Assessment
Reliance Industries	Nita M. Ambani	Yes	None	Full capture
Tata Consultancy Services	N. Chandrasekaran	Partial	Partial	Constitutive capture
Bajaj Auto	Niraj Baja	Yes	None	Full capture
Mahindra and Mahindra	Anand Mahindra	Yes	None	Full capture
Wipro	Azim Premji	Yes	None	Constitutive capture

Source: Foundation annual reports FY 2024-25, MCA21 director disclosures, integrated annual reports.

All five foundations are, on paper, entirely compliant. They are Darpan-registered, hold valid FCRA status where applicable, undergo annual audits, and file the required CSR-2 disclosures. None has broken a single provision of the Companies Act or the CSR Rules. That is the whole point. The legal framework, as it currently stands, produces governance capture as a fully compliant outcome.

IV.C Pattern 3: Inverted Circular Ownership as a Taxonomically Distinct Category

In the standard captive philanthropy model, the promoter family controls the listed company, the company funds the foundation, and the family governs the foundation. Control runs one way, money runs the other. Two of the five companies studied here do not fit that model. In the Tata and Wipro cases, the relationship between company and foundation is not directional at all. It is constitutive.

Tata Trusts holds roughly 66% of Tata Sons Private Limited, the holding company of the Tata group. Tata Sons is in turn the controlling shareholder of Tata Consultancy Services, the very entity generating the CSR obligation that gets directed back to Tata Trusts. The foundation is not simply receiving mandatory welfare spending from a company whose promoter family it shares. It owns the company that is legally required to produce that spending in the first place. At Wipro, the Azim Premji Foundation and associated entities hold roughly 73% of Wipro Limited's equity. Azim Premji chairs the implementing foundation structure while his son serves as Executive Chairman of the listed entity. The foundation is not downstream of the company here, it is part of the ownership architecture that generates the mandatory obligation it then receives.

Table 3: Standard Captive Philanthropy vs. Inverted Circular Ownership

Feature	Standard Captive Philanthropy	Inverted Circular Ownership
Corporate Ownership	Corporate Ownership	Foundation holds controlling stake in company
CSR Flow	Company to Foundation	Company to Foundation that owns company
Governance Control	Horizontal (family governs both)	Constitutive / Circular
Accountability Gap	Governance overlap	Ownership overlap dissolves donor/recipient distinction entirely
Examples	Reliance, Bajaj, Mahindra	Tata, Wipro

source: Tata Sons shareholder disclosures; Wipro Annual Report FY 2024-25; MCA21 corporate structure filings.

This paper proposes inverted circular ownership as its own taxonomic category within the captive philanthropy typology, not just a more extreme version of the standard model. In the standard model, the governance line between company and foundation has been blurred. In the inverted circular ownership model, that line has been dissolved entirely. The foundation owns the company, the company funds the foundation, and the same family sits at both ends of the structure.

V. Discussion

The findings point to something more specific than a general pattern of corporate self-interest in CSR governance. They point to a design: a legal framework that not only lets family conglomerates keep control over mandatory welfare spending, but in its most advanced form, produces entities where the foundation and the company cannot actually be separated. The next four moves build that argument out.

V.A Move 1: Statutory Silence as Legislative Authorisation

The uniformity documented in Section IV cannot be put down to coincidence, or to shared preferences among unrelated firms. Reliance, Tata, Wipro, Mahindra, and Bajaj are structurally different organisations, in different industries, that have converged on the same implementation architecture under the same statutory regime. The simplest explanation is also the right one: they are all responding rationally to the same incentive. That incentive is Rule 4(1)(a), which lets a company route its mandatory CSR funds through a Section 8 entity it has itself set up. The 2021 Amendment brought in stronger compliance requirements but left this self-routing permission entirely alone, and as Section III.A shows, this is not a legislature that shies away from granular, clause-level intervention when it wants to make one. The 2012 Standing Committee rewrote clause 135(5) word by word and added a geographic restriction on CSR spending (Standing Committee on Finance, 2012); the 2021 Amendment reworked unspent fund transfer timelines down to specific deadlines. A body capable of that kind of precision on adjacent questions, while leaving the donor-recipient governance relationship untouched across two separate rounds of amendment, was not simply unaware of the question. It had run into it, at least by implication, and had not answered it in the direction of restriction. The 2012 record itself supplies the textual basis for that reading rather than leaving it to implication, and it is backed up by the Statement of Objects and Reasons for the same Bill (Ministry of Corporate Affairs, 2013): the Committee's own account of what it called "enhanced accountability" tied board independence specifically to the composition of the donor company's CSR Committee (Standing Committee on Finance, 2012, Section 3.1(iii)(b)), and elsewhere in the same report, the Ministry's response shows the Committee actively declining a stricter geographic rule for CSR spending while treating the clause as drafted as an adequate balance of the interests before it (Standing Committee on Finance, 2012, Sl. No. 59). Independence was legislated inward, toward the company's own board. It was never extended outward, toward the foundation the company creates and staffs itself.

The comparative evidence confirms that governance insulation is available as a legislative tool. The UK Charity Commission's arm's length guidance (Charity Commission for England and Wales, 2023) and the US IRC's self-dealing prohibitions under Section 4941 (Internal Revenue Code, 26 U.S.C. Section 4941, 2018) show that a legislature can, when it wants to, build governance insulation directly into the statutory architecture. India has not chosen to do so. As Table 4 shows, the empty cells in India's row, under the arm's length requirement and independent governance mandate columns, are themselves an argument.

Table 4: Comparative Governance Insulation Mechanisms: UK, US, and India

Jurisdiction	Governing Provision	Arm's Length Requirement	Independent Governance Mandate	Consequence of Non-Compliance
United Kingdom	Charity Commission Guidance	Yes (explicit)	Yes (independent trustee requirement)	Deregistration; personal liability
United States	IRC Section 4941	Yes (self-dealing prohibition)	Yes (disqualified person framework)	Excise tax; foundation dissolution
India	Section 135 / Rule 4(1)(a)	None	None	Administrative penalty for non-spend only

Source: UK Charity Commission Guidance 2023; Internal Revenue Code Section 4941; Companies (CSR Policy) Rules, 2014.

The formal compliance of all five foundations underlines the point. They are audited, registered, and reporting. Every legal box is ticked. The issue is not that they have evaded the law. The issue is that the law, as designed, produces governance capture as a fully compliant outcome.

V.B Move 2: The Democratic Deficit

Captive philanthropy creates a public accountability problem with constitutional dimensions, not merely a corporate governance one. Section 135 delegates a state welfare function, the redistribution of corporate surplus toward public benefit, to private entities. When those entities retain control over that welfare function through self-controlled foundations, the state has effectively outsourced a sovereign obligation to actors with no public accountability mechanism attached.

The doctrinal argument here rests on the distinction between delegated public authority, which has to be exercised in the public interest, and private discretion, which can be exercised in private interest. Mandatory CSR spending is a delegated public welfare obligation. When it runs through self-controlled foundations, that obligation ends up being discharged with private discretion over what is, in substance, a public function. There is no mechanism by which the public can challenge the allocation, the choice of beneficiary, or how outcomes get evaluated. Cordeiro et al. (2021) found that in institutional void environments, the family name substitutes for independent verification, and CSR decisions are made inside closed family circles. Duggal, Bhatt, and Bharathi (2025) showed that the borrowing-cost benefit of CSR compliance is weaker for family-controlled firms precisely because creditors do not read their CSR as independent. The inverted circular ownership structures at Tata and Wipro represent the structural extreme of this: the entity discharging the public obligation and the entity that owns the obligation's source are the same entity.

Rajgopal and Tantri (2023) found that firms which had voluntarily exceeded two percent scaled back to the legal minimum the moment compliance became mandatory, while simultaneously increasing advertising spend to recover the signalling power they had lost. Bansal (2022) confirmed that firms treated the mandate as a brand-building budget, anchoring at the minimum and redirecting resources toward intangible assets instead. A Section 8 captive foundation achieves compliance, brand-building, and reputational control all at once, funded by minority shareholders. The democratic deficit this produces is not incidental to the regime. It is what the regime was always going to produce.

V.C Move 3: Welfare Tunneling

Bertrand, Mehta, and Mullainathan (2002)showed how controlling shareholders in Indian business groups tunnel value out of listed companies and into privately controlled entities, with the controller sitting at both ends of the transfer and minority shareholders bearing the cost. The inverted circular ownership structures documented in this study run on the same mechanism, but what gets redirected here is not shareholder value. It is a mandatory public welfare obligation.

In conventional tunneling, the injury falls on minority shareholders. In welfare tunneling, the term this paper proposes for the redirection of a state-mandated public welfare obligation into a private family ecosystem, the injury falls on the people Section 135 was written for, the communities, causes, and populations the law was meant to serve. The mandatory spending happens. Compliance is formally achieved. But the discretion over where that spending actually goes, and the reputational credit it brings, stays inside the corporate ecosystem. The state delegated a public welfare function to the private sector, and the private sector has kept it within the family.

Cennamo, Berrone, Cruz, and Gomez-Mejia's (2012) socioemotional wealth framework explains something that pure rent-seeking cannot: why founding family members personally chair foundations, why foundation branding and family branding are indistinguishable, and why the structure persists even where independent alternatives would satisfy compliance for less money. Masulis and Reza (2015), working in the voluntary US context, found that firm value suffers when companies route philanthropy through proprietary foundations instead of independent charities. The Indian case sharpens that finding further: the spending is legally compelled, the agency cost falls on minority shareholders, and the governance architecture gives no one a way to even detect the conflict. The combined FY 2024-25 CSR obligation of the five companies examined here exceeds Rs. 3,700 crore. Welfare tunneling is a name for what the statutory design has made possible: a mandatory public welfare obligation being absorbed, systematically, into private governance structures with no mechanism for public accountability.

Pulling the tunneling framework out of the shareholder domain and into the public welfare domain creates a new analytical category with real regulatory implications. The original framework points to remedies at the shareholder level; welfare tunneling calls for remedies at the level of statutory architecture itself. That is the bridge into the doctrinal interventions in Section VI.

V.D Move 4: CSR Transfers as Deemed Related Party Transactions

Under Ind AS 24 (Ministry of Corporate Affairs, 2015), a related party transaction is a transfer of resources between a reporting entity and a related party. A party counts as related to the entity if it is controlled by someone who is also key management personnel, or a member of that person's close family. In four of the five companies examined here, the implementing foundation is governed by the very same individual who controls the donor company as promoter. At Reliance, the foundation is chaired by the spouse of the Chairman and Managing Director, with the CMD's children serving as directors. At the K.C. Mahindra Education Trust, the controlling promoter chairs the foundation, with his spouse as co-trustee. At the Jamnalal Bajaj Foundation, every trustee is a direct descendant of the founder who controls the listed entity. At Wipro, the founder holds a controlling equity stake in the listed entity and chairs the implementing foundation, while his son serves as Executive Chairman of both.

And yet CSR transfers are carved out from Section 188 of the Companies Act, which otherwise requires audit committee approval and a majority-of-minority shareholder vote for material related party transactions. There is no principled reason this exemption should exist. The governance data collected here, promoter family chairmanship in three of five foundations, zero independent trustees in four of five, gives the factual grounding for a reclassification. SEBI's Listing Obligations and Disclosure Requirements Regulations (Securities and Exchange Board of India, 2015) already apply deemed related party classification in comparable governance overlap situations. The precedent already exists. Applying it to CSR routing would be the smallest change needed to make the law actually mean what it claims to mean.

VI. Conclusion

VI.A The Finding as a Legal Proposition

Section 135 is not a redistributive law with a governance gap in it somewhere. It is a governancesilent law wearing a compliance facade. The 2021 Amendment's thorough reform of administrative tracking, set against its complete non-engagement with governance insulation, shows that this silence is structural rather than incidental. The empirical evidence across five companies confirms it: where governance insulation is missing from the law, it is missing from practice too, uniformly and systematically. Five independent boards, making independent governance decisions across different industries and different ownership histories, arrived at the identical structure. The statute is the one variable they all had in common.

VI.B Three Doctrinal Interventions

Three reforms follow from this analysis, each tied to a specific finding and aimed at a specific defect in the existing framework.

First, transfers of mandatory CSR funds to foundations and Section 8 entities that show documented governance overlap with the donor corporation should be classified as deemed related party transactions under Section 188 of the Companies Act, 2013, triggering audit committee review, enhanced disclosure, and approval by disinterested shareholders once transfers cross material thresholds. SEBI's LODR Regulations (Securities and Exchange Board of India, 2015) already apply this kind of classification in comparable situations; the doctrinal precedent just needs to be extended.

Second, the Companies (CSR Policy) Rules should require that any Section 8 company, trust, or society set up by a donor company for CSR implementation maintain at least 50% independent directors with no material ties to the donor's promoter group. Independence should be defined against the arm's length standards already operative elsewhere in the Act. This would directly address the four-of-five zero-independence finding in Section IV.B, without shutting familycontrolled foundations out of CSR funding altogether. It would simply require that their governance structure carry a minimum level of external accountability.

Third, the Ministry of Corporate Affairs should build a publicly searchable governance overlap disclosure register, run through the National CSR Portal, requiring every CSR-implementing agency to disclose trustee and director composition, the identity and shareholding of all beneficial controllers, governance and family relationships between implementing agency leadership and donor corporation leadership, and the proportion of total receipts coming from a single donor. Transparency does not replace the structural reforms above, it is what makes them enforceable in the first place.

VI.C Scholarly Contribution

This paper makes three contributions to the field. The doctrinal extension of the related party framework to CSR routing gives minority shareholder protection law a foothold in the mandatory welfare domain, somewhere it has never operated before. The theoretical extension of tunneling theory into the public welfare domain, through the new category of welfare tunneling, creates an analytical tool with implications beyond India, for any jurisdiction that mandates corporate welfare spending without requiring governance insulation at the implementing agency level. And the governance overlap mapping protocol offers a replicable empirical method, usable in any jurisdiction with a mandatory CSR implementation agency framework. Taken together, these three contributions make the same point: captive philanthropy is not a governance gap that simply hasn't been noticed yet. It is a statutory design that has, until now, gone unnamed.

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