

A Legal Review of Corporate Social Responsibility

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Abstract

The legal frontier has over the years proved its worth in shaping concepts and theories of humanity to the effect of influencing the sanity of its practice and its longevity. Corporate Social Responsibility is a theory that has existed over decades. It has however undergone various transformations as it has being duly influenced by facets of academia and developments all with the aim of maximizing its impact in the cause of achieving global development and sustainability. This academic piece in perspective, analyses the concept in legal terms and the light of its relevance today. Providing a legal definition and review of the concept in modern terms, the piece concludes with the need for more legislation to this regard.

Keywords: Corporate Social Responsibility, Sustainable Development, Law, Regulation.

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1. Introduction

This paper presents a vivid legal perspective of Corporate Social Responsibility which is henceforth referred to as CSR. It further presents a briefing and summary of some key elements of the concept of CSR so as to build a foundation for the achievement of the set goal of the academic piece which is to shed light on the concept of CSR and its practices today in legal terms. It is expedient to note that CSR, which is also referred to as responsible business, corporate governance and corporate citizenship, has no single universally accepted definition. The concept has been described and defined by concerned organizations and institutions alike both in the academic and non-academic arena. CSR has also mainly been highlighted by individuals who have researched and studied the progressive trend of this phenomenon. With no grounds of profit mentioned throughout the definitions of CSR, the concept has over the years hinged on the respect for ethical and economic values and in some cases compliance to legal requirements. The definitions and perspectives which span from the mid 90's till date all give different viewpoints to CSR. As mentioned above our prime standpoint of undressing CSR in this paper will be from a thoroughly legal perspective.

2. Notable definitions of CSR

The World Business Council for Sustainable Development (WBCSD) is an organization which seeks to unite businesses. The organization in its publication "Making Good Business Sense" by Lord Holme and Richard Watts defined CSR as, "the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large".¹ The European Commission, which is one of the strongest world unions, in its launch of the communique on CSR for the 2011-2014 period on the 25th of October 2011 in Brussels, Belgium gave another working definition for CSR within the European context. The commission defined CSR as "the responsibility of enterprises for their impacts on society". The commission further stated that "to fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical and human rights concerns into their business operations and core strategy in close collaboration with their stakeholders".² The World Bank has also defined the concept of CSR as "The commitment of business to contribute to sustainable economic development, working with employees, their families, the local community, and society at large to improve their quality of life, in ways that are both good for business and good for development".³ This definition pivots on three major factors, to improve economic factors, environmental factors and also social life. This has been seen by many scholars as one of the most satisfying definitions for CSR.

In a broader search for definitions from other perspectives, some governments of states have been found elaborating on the concept and highlighting their thoughts on it. One major definition of CSR of some governments is that of the Chinese government. They have been recorded stating in relation to CSR that "While pursuing economic profits, corporations are held responsible by shareholders, employees, consumers, suppliers,

¹ WBCSD definition for CSR by Lord Holme and Richard Watts.

<http://old.wbcsd.org/work-program/business-role/previous-work/corporate-social-responsibility.aspx>

² CSR Europe new definition for CSR.

<http://www.csreurope.org/new-eu-definition-csr-mirrors-enterprise-2020-aspirations>

³ Jørgensen, H.B., Pruzan-Jørgensen, P.M, Jungk, M and Cramer, A (2003) Strengthening Implementation Corporate Social Responsibility in Global Supply Chains, World Bank CSR Practice.

communities, and other stakeholders. Moreover, corporations have responsibilities to protect the environment”¹. This statement made by the government has since been held as a defined expectation by the Chinese government concerning corporate social responsibility. However, it is important to note that in China, more comprehensive CSR activities are run by state enterprises. In China, CSR initiatives include laws and regulations, governmental instructions and guidelines, non-governmental standards and clear cut rules for organizations.² Another government found to be very vocal in the expectations and definitions of CSR is the United Kingdom. The government of the United Kingdom has also been heavily involved in the introduction of laws and regulations, governmental instructions and guidelines as well as non-governmental standards concerning CSR. In definition the government of the UK has stated that “Corporate Responsibility can be defined as how companies address the social, environmental and economic impacts of their operations and so help to meet our sustainable development goals. Specifically, we see CSR as the voluntary actions that business can take, beyond compliance with minimum legal requirements, to address both its own competitive interests and the interests of wider society”³.

3. Factors to consider in defining CSR

Through all the highlighted definitions, the paper, by closely analyzing, identifies the presence of certain factors that engulf the concept. In spite of the varying perspectives it is possible to notice the trend of some key elements that form the core of the CSR notion. These elements that identify the concept serve as the key ideas that highlight the motives and results of the concept.

3.1 Economic and sustained development

The initiation of CSR in countries is to aid in the building up of the country economically. Closely linked with sustainable development, the concept has been noted for having a track record of increasing infrastructure, encouragement to paying taxes and royalties and ensuring revenue transparency. This is also realized by the eradication of some cankers that dent the development of nations. These include bribery and corruption, irresponsible use of government funds and the waste of resources that can serve the country well. CSR in its comprehensive nature aids in nation building.

3.2 Direct impact on stakeholders

The concept is geared towards shifting the attention of businesses from solely making profit to the consideration of the interest of its stakeholders. The stakeholders of this concept include the shareholders, employees, customers, suppliers, the environment, society and the country in which it is located. The actions and incorporations of activities to directly impact the stakeholders of the concept is also a notable inclusion to the definition of CSR. By this, major highlights are thrown on capacity building, skill acquisition, health, education and progressive well-being.

3.3 Environmental protection

Often treated as a single factor on its own, the environment has over time been the frame of CSR development thus taking a more central focus. With growing concerns on the degradation of the environment, many companies, organizations and governments have made environmental protection a key area in corporate social protection. With regards to mining, forestry, agriculture and other sectors that deal directly with the environment CSR has become a major concern in the wake of global warming and the greenhouse effect.

3.4 Sustainable development

CSR as postulated by the UN and other key organizations is to ensure sustained development internationally and in the domestic arena as well. The concept of CSR is largely accustomed to sustainable development and seeking to eliminate the challenges and problems to achieving a sustained development of a country and the world as a whole.

3.5 Non – profit

The whole idea of CSR is to encourage companies and organizations to look at initiating developmental activities and solve problems that exist not for the sole purpose of acquiring profit. Though many companies and organizations have attained well-known brands through the excellent execution of their corporate social

¹ SASAC (2009) Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities, SASAC, PRC.

² Li-Wen Lin (2010). Corporate Social Responsibility in China: Window Dressing or Structural Change? Berkeley Journal of International Law. Vol. 28:1, pp. 64-100.

³ UK Department of Business, Innovation and Skills Accessed 11/04/10.

<http://www.bis.gov.uk/policies/business-sectors/low-carbon-business-opportunities/sustainable-development/corporate-responsibility>

responsibilities which has indirectly influenced consumption and hence profit, the major motivation for these under the CSR program is not profit oriented.

3.6 Ethical behavior

On the other hand, another popular factor is that of considering CSR in an ethical sense. Many are of the view that it is simply ethical to ensure that your stakeholders are having a better life and developing sustainably. This factor places more emphasis on morality and sympathetic reasoning where companies and firms are intrinsically motivated to include CSR practices in their mainstream plans and activities to fulfil moral and ethical standards.

4 A legal perspective and definition of CSR

The concept of corporate social responsibility has evolved from the 1950's from being an action of goodwill to being regulated by policies, initiation of rules and regulations and in some countries, laws as to how the hugely philanthropically seen activity should be carried out. The concept is now largely engulfed by hard, weak and soft laws. Hard in the sense of clear cut requirements for companies and organizations to execute by way of corporate social responsibility and punishments for those who fail to comply. Also there are soft laws which are more conventional and encourage firms to partake in CSR. Others poorly spoken of are those which have been clearly initiated by governments but have not been well enforced and coordinated so are as though they don't exist. These are referred to as weak laws.¹ In this section we shall analyze how CSR can be promoted legally through policies, regulations and laws in the domestic, international arena and sum it all with a legal definition of the concept.

4.1 Policies.

As sighted by the governments of China and the United Kingdom's definition of corporate social responsibility, some governments have really taken it upon themselves to enhance and facilitate CSR by firms both local and multinational within the country. This stand of these governments has led to the development and introduction of some CSR programs and policies to influence the actions of the corporate organizations.² Through policies that have been passed by parliament, governments across the globe have been able to influence companies and organizations to include and integrate corporate social responsibility activities and programs into their structures.³

4.2 Regulations.

Many countries have been found in the process of coming together to enforce a regulation to govern their activities concerning CSR. The story is no different in Europe where fifteen countries have come together to enforce a CSR regulation to control the actions of firms within the countries in the field of corporate social responsibility.⁴ The regulatory mechanisms in various countries vary as the governments put into consideration the variety of firms and the uniqueness of the situations and the stakeholders.⁵ Canada in its process to enhance and facilitate corporate social responsibility, in 2007 implemented a CSR regulation under Prime Minister Harper. This was to serve the purpose of encouraging firms to meet the standards of CSR in the country.⁶

4.3 Laws.

CSR as clearly stated in sections above has evolved into laws in some countries. Some governments have set CSR as part of their agenda and have enshrined laws for companies to comply and punishment for those who defy the laws.⁷ One of the leading countries of CSR in the western world is the United States of America and as far as the 1800's the government of the USA could retract a company's license if it acted in any way they found irresponsible. This further went on to the firms being recognized as legal persons and as such able to enjoy protection from the government and the constitution as well.⁸ In Denmark the law took CSR a step further as well by making it mandatory for the corporate social responsibility information to be included in the financial

¹ Klarsfeld, A., Delpuech, C. (2008). Hard law, soft law, weak law: the implications of the neo-institutional and social regulation theories on CSR and the distinction between hard and soft law, Working Paper, Toulouse Business School.

² Albareda, Laura; Lozano, Josep M.; Ysa, Tamyko (2007). "Public Policies on Corporate Social Responsibility: The Role of Governments in Europe". *Journal of Business Ethics*. September 2007, Volume 74, Issue 4, pp. 391–407.

³ Corporate Social Responsibility National Public Policies in the European Union - Compendium 2014 - Digital Single Market - European Commission". Digital Single Market. Retrieved 2016-04-04.

⁴ Ibid.

⁵ Sacconi, L. (2004). "A Social Contract Account for CSR as Extended Model of Corporate Governance (Part II): Compliance, Reputation and Reciprocity" (11). *Journal of Business Ethics*, pp. 77–96.

⁶ Government, Canada. "Corporate Social Responsibility Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector". Government Policy. Foreign Affairs and International Trade Canada. Retrieved 11 February 2013.

⁷ Ibid.

⁸ Banerjee, S. B. (2008). "Corporate Social Responsibility: The Good, the Bad and the Ugly". *Critical Sociology*. 34 (1), pp. 51–75.

reports of the 1100 largest Danish companies, investors and state-owned companies by virtue of the passing of a CSR mandatory bill on the 16th of December 2008 and was made effective on the 1st of January 2009.¹ Concerning the legal requirements under law India and Mauritius have also taken giant steps. In Mauritius the government has enforced that companies registered in the country are mandated to pay 2% of their annual book profit to aid in the development of the country's society and environment which largely falls under corporate social responsibility.² In 2014, India in a bid to make the most of the companies and firms registered in the country passed a mandatory minimum CSR spending law. The law Under Companies Act, 2013, stated that "companies having a net worth of 500 crore or more or a turnover of 1,000 crore or a net profit of 5 crore must spend 2% of their net profits on CSR activities".³ With reference to the legal perspective of CSR much is made mention of Policies, Regulations and Laws. Looking closely what really are the difference between these elements which all geared to improve the practice of social corporate responsibility. A Law can be defined as a "system of rules that are created and enforced through social or governmental institutions to regulate behavior".⁴ On the other hand a policy can also be defined as a "deliberate system of principles to guide decisions and achieve rational outcomes".⁵ Finally, a regulation can be defined as "legal restrictions promulgated by a government authority, contractual obligations, social regulation, co-regulation, third-party regulation and certification, accreditation or market regulation".⁶ Policies or public policies are governmental frameworks that comprise of rules, laws and regulations. They normally convey the intent of the government and procedures to attain some specific goals. So in most instances CSR requirements begin off as some sort of policy or intention of government. The policies are mostly as a result of high focused meetings on the central issue of discussion. The regulations come in as a defined specification within that field by the authorized institution. The regulations govern the actions and mount the expectations as to what should be done and what is required of the firm or institution. The laws are legal frameworks that enforce the rules and regulations to ensure the goals are realized and penalties meted out to those who shall flout them.⁷

4.4. Legal definition of corporate social responsibility

A definition may highlight the core essence and orientation of a concept but according to the perspective that the concept is viewed, many diverse definitions may be coined. Same can be said about the concept of corporate social responsibility. The perspective from which this concept of discussion is viewed from may add a twist or depth to its definition. Many of the definitions that have flooded the academic arena are more business and economically related and only a few make any direct or indirect attribute to the legal perspective. In defining the concept of CSR legally it is expedient to make mention of the fact that in some countries firms are implicated by the laws of the state to mandatorily engage in CSR practices where as in other countries the firms explicitly engage in CSR by way of their voluntary free will.⁸ So the key factors to the legally inferred definition would be a perfect link between the core principles of corporate social responsibility in relation to the key factors of the concept in the light of the legal sphere. So with reference to the above given information and for this academic piece of giving a legal perspective to CSR, this paper defines CSR as...

"the execution of implicit or explicit responsibilities for the development of the economy, society and individual lives by firms and organizations in their place as legal persons in a country in accordance with international and domestic legal requirements which ensure sustainability, accountability and transparency of their social responsibilities".⁹

This definition gives regard and includes all legal frameworks under laws, policies and regulations of a country that require the execution of corporate social responsibilities by firms or organizations. The introduction of the aspect of firms being recognized as legal persons in a country is in line with a school of thought concerning CSR. This school of thought postulates that registered firms are recognized as legal persons, and as such enjoy some sort of protection under the government hence they also have a role to play from a more ethical and in some cases legally required standard as citizens to ensure the direct development of all stakeholders.¹⁰ The mandatory compliance to CSR by major firms and organizations as a result of some domestic and international instruments can be spotted across the various aspects of CSR. This can be identified with regards to

¹ Danish Centre for CSR's official website Archived July 3, 2009, at the Wayback Machine.

² Yogan and Ramtohol. "Corporate Social Responsibility in Mauritius" 6th September 2011.

³ <https://www.slideshare.net/Ramtohol/corporate-social-responsibility-in-mauritius>.

⁴ "Implications of Companies Act, 2013 Corporate Social Responsibility" (PDF). Grant Thornton India LLP. Retrieved 7 March 2014.

⁵ Robertson, Geoffrey (2006). Crimes against Humanity. Penguin. ISBN 978-0-14-102463-9.

⁶ Definition of policy in Law. <http://sydney.edu.au/legal/policy/what/index.shtml>.

⁷ Levi-Faur, David, Regulation and Regulatory Governance, Jerusalem Papers in Regulation and Governance, No.1, 2010.

⁸ As explained by the author.

⁹ Matten, D. and J. Moon (2008). "Implicit" and "explicit" CSR: a conceptual framework for a comparative understanding of corporate social responsibility." *Academy of management Review* 33(2), pp. 404-424.

¹⁰ As defined by the author.

¹⁰ Banerjee, S. B. (2008). "Corporate Social Responsibility: The Good, the Bad and the Ugly". *Critical Sociology*. 34 (1), pp. 51–75.

the environment by the means of global warming and climate change or via the domain of human development in the area of health and human rights. These instruments which were set in motion by international governing organizations like the UN have provided the bases for mandatory compliance and adherence to CSR standards.

5. Conclusion

The necessity for specified legislative systems concerning CSR cannot be underestimated as the drive and need deepens for multinational companies and firms to practice CSR in their daily operations. These laws can be highlighted by indirect and direct means. Indirect, like in the case of countries where there is no specific CSR law so they make use of laws and regulations of other sectors that indirectly legally support stipulated CSR practices. Directly, we can consider the legislative abilities of the European Commission, India, Mauritius and a host of other stakeholders who have mandated some CSR codes and standards by the implementation of a CSR bill. The legal way is the best way going forward. A thorough understanding of this need for legal entrenchments of CSR practices by companies will not only ensure a long lasting impact of the practice but will also bring and effective general coordination for an effective monitoring and evaluation of the concept as the years pass by.

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