

RETHINKING CORPORATE SOCIAL RESPONSIBILITY: NEED TO SYNTHESISE ETHICS, MORALITY AND LEGALITY

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ABSTRACT

The idea of Corporate Social Responsibility (CSR) has always been an integral part of business organisations as a consequence of their sense of moral obligation towards the society. Traditionally, the private companies and corporations have been voluntarily engaged in doing a variety of social welfare and developmental activities as a matter of charity guided by philanthropic considerations. However, the present socio-economic complexities caused by globalisation and market economy call for an intensive CSR linking it to the broad goals set by 'sustainable development' agenda. At the present time when many unethical practices and socially irresponsible behaviour are being adopted by private companies including MNCs, the utility of voluntary approach based on moral consideration is being questioned and a mandatory approach based on legal obligation (CSR law) is advocated in place of the former. However, the experiences from few countries having adopted mandatory CSR indicate that the legal obligation leads to formalism and stifle innovation in CSR agenda fixing and their implementation. Business houses and CSR managers bound by legal obligations may only be fulfilling a mere formality unless strongly driven by ethical and moral considerations to contribute to the betterment of people, society and environment under the broad framework of sustainable development. Mere outlay of funds without a practical plan of action catering to the needs of the intended and targeted sections, though will entail expenses, but will ultimately fail in bringing the desired result. Therefore, it is argued, in this paper, that a wholistic approach needs to be developed integrating both 'legal obligation' and 'moral and ethical consideration'. In order to address the complex socio-economic issues caused by the present market economy, all private companies including MNCs needs to be very committed and innovative in designing and implementing CSR projects going beyond the standards set by the law. The CSR managers should not confine themselves to the basic requirements of law; rather they should exhibit a high level of professionalism and be proactive in designing CSR programmes that attain the goals of sustainable development.

Keywords: Corporate Social Responsibility, Corporations, Moral Obligation, Legal Obligation and Sustainable Development

Introduction

The idea of Corporate Social Responsibility (CSR), though relatively new to the world of business, but the contribution by private companies towards the welfare of the society is an age-old practice. Traditionally, this practice was purely a voluntary activity of private enterprises out of their good sense of charity or philanthropy and moral obligations. However, the present idea of CSR is a comprehensive package of socially responsible behaviour of private companies (including MNCs) towards society, environment and all stakeholders like consumers, employees, local communities and society at large. The CSR, in last few decades, has emerged as a multidimensional organizational phenomenon, asking the business enterprises to develop a culture of responsibility for its actions and their impacts on various stakeholders and society as a whole (Zhao, 2017).

The co-relationship between business ethics and social responsibility has undergone a major change, in recent years, due to the negative impact of Globalisation-Liberalisation-Privatisation on state, market and society. This has brought CSR to the mainstream of business to address some of the issues that has bothered the humankind in the market and global economy. With the rise of globalised market economy and decline of the role of welfare states (Fifka, 2013), corporations (both domestic and MNCs) or private companies are no longer considered as simply the provider of goods and services and profit-making entities, but they now go beyond their business and legal requirements to address the socio-economic, cultural and even environmental needs of the society. The present concern for sustainable development, environment, socio-economic justice and human rights acts as a trigger for promoting CSR vigorously. As a result, around two third big companies of the developed and industrialized countries are now regularly publishing their reports on CSR initiatives and sustainable development strategies (KPMG, 2011).

The CSR discourse, in the present scenario, is engaged in addressing its greatest challenge of how to make companies socially responsible considering the economic freedom and basic nature and objective of business (Scherer & Palazzo, 2011). The CSR activities, in most of the societies, are undertaken under the traditionally established charity and philanthropic framework based primarily on moral considerations. However, few countries such as India, Indonesia, Philippines, Mauritius, etc. have gone beyond morality to make CSR legally binding on business organisations. It is assumed that these new shifts of emphasis (from voluntary to mandatory) not only compel every company to follow CSR as a matter of law, but make the impact of CSR programmes more visible in terms of achieving the objectives of 'sustainable development' and solving many crucial socio-economic issues. However, the legal approach which is in operation in few countries, needs to be examined in terms of its impact on CSR strategy vis-à-vis the voluntary approach. This paper makes an attempt to present a comparative analysis of the

relative merits of both approaches in shaping the CSR strategy and to identify some good practices in CSR discourse in terms of making it more useful in addressing socio-economic and developmental needs of the present world.

Why Corporate Social Responsibility?

The most important question that comes in the discourse of corporate social responsibility is not what is CSR, but why corporate houses should/must adopt CSR in their management strategy? What could be the driving force behind the practice of CSR? Why it should it be an integral part of the companies whose ultimate purpose is maximization of profit and consumer satisfaction? Is CSR compatible with the agenda of profit-making of the corporate entities in a competitive market? More than one justification, are provided to answer these fundamental questions which are perennial in the debate of CSR. A number of approaches have been developed over the years on the above questions and debates which merit different justifications and arguments, sometimes overlapping too. Business organizations perform CSR under various considerations like moral or ethical consideration, legal obligation, stakeholder's pressure and economic performance or organizational benefits (Aguinis & Glavas, 2012; Zhao, 2017). In few cases CSR activities help minimizing the impact of corporate misconduct and unethical practices (Zhao, 2017). We, through an extensive review of literature, believe that not one but all arguments together provide justification for why CSR should be an integral part of the corporate world in the present capitalist and globalised economy. This paper, with a comparative perspective, will make a normative examination of three major considerations or justifications behind the socially responsible behaviour of business entities.

CSR: A Moral Obligation

The socially responsible behaviour of business entities are primarily guided by their moral obligation towards the society and various stakeholders. The drivers to contribute to the society voluntarily come from the principles of morality, ethics and philanthropy. Business organizations carry out CSR activities as a moral or ethical obligation towards the society and all stakeholders (Freeman, 2010; Garriga & Melé, 2013; Subramaniam et al., 2015). Normative considerations like high sense of duty and obligations, stewardship and morality motivate the business enterprises to be engaged in CSR activities (Aguilera, et al., 2007; Bansal & Roth, 2000; Davis, Schoorman, & Donaldson, 1997). Charity and donation by corporations towards social welfare activities and strong commitment for the wellbeing and needs of the people has always been associated with the business in all societies of the world (Sangle, 2010; Sharma, 2009).

Regarding ethical responsibility, Archie B. Carroll (1991) said "Ethical responsibilities embody those standards, norms, or expectations that reflect a concern for what consumers, employees,

shareholders, and the community regard as fair, just, or in keeping with the respect or protection of stakeholders' moral rights". The basic ethical consideration behind the CSR is that business organizations have to return to the society in which they operate and get their financial benefits. In addition to economic objectives, they have to work towards wider goal that is the general good of the society by adopting socially responsible behaviour (Zhao, 2016). Today, in majority of cases across the world barring very few countries (India, Mauritius, Indonesia, etc), CSR is performed voluntarily on moral, ethical and philanthropic grounds. In addition to this, in the last one decade, many soft laws have been developed at the international level as moral standards for the corporations including MNCs to implement CSR.

However, there is a strong debate going on in the recent years to move from a voluntary (moral, ethical and philanthropic) to a mandatory (legal) framework of CSR (Bendell, 2004), in the backdrop of present moral crisis and necessity caused by free competitive global market economy along with certain limitation of the former framework (Waagstein, 2011; Zhao, 2017). The voluntary approach with the backing of some soft laws, guidelines and code of conduct, fails to compel all companies to discharge their social responsibilities and even in some cases, fails to prevent some unscrupulous firms from adopting unethical practices to maximizing their profit (Waagstein, 2011). Secondly, the philanthropic and charity approach based on moral obligations does not set a uniform standard of CSR practice for all corporate houses resulting in loose implementation of business social commitments (Waagstein, 2011).

There is no renunciation of the fact that certain business organisations, for quite a long time, under this approach have been engaged in addressing and fulfilling some needs of the society at large because of moral, ethical and philanthropic considerations, but pragmatically there are limitations on business. In fact, it is unlikely that business can run only on morality as market is not based on perfect competition. The voluntary CSR initiatives are mainly based on the management's done assessment of needs of the beneficiaries, and secondly CSR strategies are formulated and implemented as per companies' convenience, availability of resources and willingness to spend on CSR. Thirdly, this practice results in imperfect assessment of the needs of the society, which consequently ends up, in many cases, in half-heartedly design of CSR strategy and their ineffective implementation and poor impact. Fourthly, due to lack of any legal sanction and standard of CSR practices, the needs of all stakeholders are not necessarily taken up by the companies. Lastly, in the absence of any law and legal procedure regulating CSR, it is difficult to determine the accountability of companies towards their socially irresponsible and unethical behaviour.

CSR: A Legal Obligation

In the last one decade or so, the CSR which has traditionally been associated with moral obligation, voluntarism and philanthropy is being linked to corporate law with the assumption that the later will play a critical role in promoting more effective socially responsible behaviour among the private companies (McConvill & Joy, 2003; Stout, 2012). The socially responsible behaviour of companies is not a matter purely left to the sense of morality of business organisations, nevertheless it should be a legal obligation imposed on them through state. The changed role and responsibilities of state and private sector resulting from the present liberalization, privatization and globalization, require a more progressive and proactive CSR and correspondent changes in the corporate law which is expected to set the CSR-related standard rules to regulate the corporate social behaviour (Zhao, 2017). The main complaint against the existing corporate law is regarding its failure to provide the desired competitive working environment, to control the negative externalities of corporations and to prevent them from conducting unethical practices that not only affect the environment but harm the interest of the stakeholders and society at large (Korten, 2015; Scholte, 2005). Gilson (1996) describes the prevailing corporate codes are like a 'Black Box' containing rules regulating mostly the corporations' technical operations without much concern with what the corporations actually should do.

The above limitations of the existing corporate law which consider CSR as an ethical and moral social responsibility of the business organizations, generate the need for specific legal (regulatory) framework to make the CSR mandatory and effective. The survey of literature suggests that there are strong arguments in favour of promoting a legal framework for making CSR mandatory for all companies and for a greater understanding and implementation of CSR (Bendell, 2004). It is assumed that regulating CSR through corporate law will enable business organizations to consider ethical and moral issues as a legal obligation and avoid corporate scandals and misconducts (Selznick, 2002 and Zhao, 2017). The Few countries like India (Subramaniam, et al., 2015; Zhao, 2017), Indonesia (Waagstein, 2011), Philippines (Gowda, 2013), Mauritius, etc recently have incorporated CSR in their corporate law and tried for a uniform and effective implementation of social obligations by making minimum CSR activities mandatory for all private and government companies.

Despite so many arguments (moral and technical) against the feasibility and effectiveness of mandatory or legal approach, the CSR law has the potential of institutionalizing socially responsible behaviour across all companies by making CSR activities a legal obligation of all business organizations (Waagstein, 2011). Secondly, the legal obligation not only ensures the implementation of CSR programmes, but also encourages the society at the grassroots level to be more engaged in monitoring the corporate social behaviour. In addition to promoting society's

active participation in the CSR-related decision-making and actions, the regulatory framework brings clarity, consistency and predictability in CSR strategy and as a result it reduces transaction costs for business (Kerr, Janda, & Pitts, 2009). Thirdly, it keeps the companies away from unethical practices and taking undue advantages from the system (Waagstein, 2011). Fourthly, the merits of the CSR law are that it makes CSR precise and enforceable and it promotes an authoritarian interpretation and implementation of corporate social obligations (Abbott & Snidal, 2000). Lastly, it is believed that state regulation of CSR promotes accountability and the provision for punishment in case of violation of CSR standards by the private companies which results in better compliance (Zhao, 2017).

CSR: A Management Strategy

The engagement of business in social obligations is not always purely guided by ethical or moral consideration or legal obligation, but the financial and organizational benefits that companies get out of the CSR activities also act as a major driving factor (Aguinis & Glavas, 2012). Research done on the relationship between CSR and corporate financial performance establish a close relationship between these two. Companies constantly and continuously engaged in CSR activities are more likely to create good reputation in the society, build customer loyalty and ensure better evaluation of products (Aguinis & Glavas, 2012) which would likely have positive impact on the profit of the organization in the long run. Orlitzky, Schmidt, and Rynes (2003) in their study on CSR-outcome relationship found that there is positive relationship between CSR activities and financial performance of the company. They argued that CSR activities improve the firm's goodwill and reputation among the stakeholders and which ultimately results in increased financial performance. The review of 128 research work on CSR-financial outcome relationship by Pelozo (2009) revealed that 59% of studies projected a positive relationship, 27% found a neutral or mixed relationship while 14% of studies found a negative relationship. Thus, in many cases CSR is used as a management strategy to enhance the organization's financial benefits and in few cases to address non-financial factors like damage control and appeasement of general public or people affected by the company's activities.

A Need to Develop an Integrated Approach

The survey of literature indicates that mandatory CSR under a 'legal obligation framework' does not always ensure effective and guaranteed implementation. This is because of, as argued by M Kerr and many others (Benn, Dunphy, & Griffiths, 2014; Filatotchev & Nakajima, 2014; Kerr et al., 2009), inadequate sanctions and limited enforcement resources, business evasion and sometime political interference. Jingchen Zhao (2017) argued that making CSR a legal obligation through corporate law will change the voluntary character of CSR and encourage corporations to engage with internal self-governance, rather than relying on external contacts and

regulations. In reality, in majority of cases, CSR has been in practice for long because of the morality and ethics. So, the notion of CSR going beyond the legal obligations, advocates more than what law expects the companies to do. On the contrary mandatory CSR only fix a minimum standard and leads to tokenism. The minimum standard set by law force the companies to do symbolic activities and as a result the substantive CSR is neglected by the management (Tenbrunsel, et al., 2000) Therefore, many companies are against mandatory CSR because they argue that regulation in most cases stifle innovation and damage national competitiveness (Zerk, 2006). Villiers (2008) rightly said “ A ‘one size fits all’ approach, resulting in a regulatory framework that is effective and efficient for every single jurisdiction, is clearly not possible and desirable; rather, regulation should be implemented in such a way that it is aligned with an enabling business environment and corporate law and governance regimes with characteristics that are unique to that jurisdiction”.

Some of the critics of mandatory CSR advocates that legal regulation of CSR is not required because companies know the long term financial and organizational benefits of being socially responsible in terms of establishing useful relationship with stakeholders and people as whole. Because of this awareness, business organizations are engaged in CSR activities voluntarily and do it beyond the legally prescribed standard (Zhao, 2017). Law regulating CSR is criticized as a ‘stealth tax’ which act as an investment barrier because it is not clear regarding legal Vs moral responsibility (WSJ, 2007). Considering the merits of voluntarism, European Commission in its 2001 Green Paper, proposed that CSR activities to be conducted on a voluntary basis.

The debate regarding voluntary verses mandatory indicates that both these approaches needs to be integrated to make CSR more effective and universal by addressing the greater interest of the society, the issues of environment and human rights and for a sustainable economy and market. Despite the fact that CSR is predominantly a voluntary activity of the corporations, many critics of the voluntary approach and supporter of mandatory framework argue that various problems related to CSR calls for some kind of legal regulations on the companies regarding their social obligations. The interest of all stakeholders should be explicitly recognized and protected in the framework of CSR and it is believed that this can be more accurately done only through a legally regulated model of CSR (Buhmann, 2006; Horrigan, 2010; McBarnet, Voiculescu, & Campbell, 2009; Patel, 2010). European Commission in its new CSR strategy in 2011, tried to make an integration of both the approaches. It suggests that CSR ‘concerns actions by companies over and above their legal obligations towards society and environment’ and however ‘certain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibilities’. As advocated by many, the coordination of both ‘regulation from national government and international level’ and ‘voluntary or self-regulatory approach’ is the need of the day(Picciotto, 2003). The minimum standard and accountability set by law needs to

be backed by a strong moral commitment of CSR managers towards the welfare and development of society, creates an ideal situation for an effective practice of CSR. However, the CSR law needs to be progressive and positive so as to make companies do what they are supposed to do (Selznick, 2002).

Conclusion

The Corporate Social Responsibility, at the present time of globalisation, needs to be approached from more than one perspective. One is not necessarily contradictory of others. The mandatory approach based on law ensures the participation of business organizations in the socio-economic development by fixing a standard of CSR activities while, on the other hand, the ethical and moral considerations promote the level of commitment that is required to have an impactful implementation of CSR agenda. Business houses and CSR managers bound by legal obligations may only be fulfilling a mere formality unless strongly driven by ethical and moral considerations to contribute to the betterment of people, society and environment under the broad framework of sustainable development. Mere outlay of funds without a practical plan of action catering to the needs of the intended and targeted sections, though will entail expenses, but will ultimately fail in bringing the desired result. Therefore, an integrated approach needs to be developed emphasizing both on legal obligation and accountability (through hard law) and promotion of a strong moral and ethical framework (through soft laws). In order to address the complex socio-economic issues caused by the present market economy, private companies including MNCs need to be very committed and innovative in designing and implementing CSR projects going beyond the standards set by law. It is well argued that "CSR needs to be fostered rather than imposed" (Tencati et al., 2010). The CSR managers should not confine themselves to the basic requirements of law; rather they should exhibit a high level of professionalism and be proactive in designing CSR programs that attain the goals of sustainable development.

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