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Corporate Social Responsibility: The disclosure of an Inclusive Regulatory Model

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Abstract

Corporate Social Responsibility has great significance because due to it the corporate bodies not only consider the interest of the stakeholders but also consider the environmental, economic, and social impact of their actions. CSR has a broad spectrum and it is a "voluntary action" that the companies or businesses take to address the issues related to "corporate irresponsible behavior" regarding social issues including labour, environmental, abuses of human rights. However, the piece inspects CSR as the mechanism for business operations, from the manufacturing and delivery of services or products to generating and promoting the interaction with the stakeholders of the company in a way to protect and encourage moral values or ethical conduct, legal requirements, and social expectations. For this purpose, the paper discusses the relationship between CSR and corporate governance to find the convergence between both. CSR in current times is weakly promoted due to the fact that the initiatives of CSR are existing without any socio-economic developmental impact. To fill that gap this paper conducts qualitative research and the research piece is an endeavor to examine CSR regulation including prescriptive and self-regulation. The piece explores the limitation of CSR regulation and constructs a framework for enhancing the accountability mechanism in CSR practices. The paper provides a more dynamic, responsive, effective, and coherent framework called the "inclusive regulatory model."
Keywords: Corporate Governance, Corporate Social Responsibility, Inclusive, prescriptive and self-regulation, accountability in CSR practices, sustainable stakeholder engagement

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1. Introduction

Corporate Social Responsibility covers a very wide range of social-economic concerns. Moreover, it also covers the fields of environmental protection and climate change. To embrace CSR, the national and multinational companies have adopted a new path for doing business and achievement of public policy goals, a new unobstructed road that can be the ethical and moral way of doing business. CSR is more popular in advanced and developed countries than developing countries. CSR is welcomed by the companies and it is part of the daily practices of the companies. CSR has become a potential mechanism for policymakers and non-governmental organisations. This research paper investigates CSR as an apparatus that maintains the operations of the company for the production and delivery of goods or services as well as an initiative for generating and encouraging the interaction with the stakeholders of the corporation to encourage moral values or ethical conduct, socio-legal expectations. This research article discusses the "principle of stakeholder engagement" and association based on trust which improves and develops understanding to recommend that the participation and involvement of the stakeholders in the corporate social responsibility regulation practice will be fruitful in promoting the responsiveness, effectiveness, and coherence of CSR practices. So, this research piece conducts qualitative research of the extant literature to suggest the proposal made in his research article. The literature has been accessed from various journals, law reviews, books, and texts and material on CSR, Corporate Law, Corporate Governance, Business Law, statutes, and regulations.

To this end, the article discusses the convergence of corporate governance and CSR to find the relationship between both. The article scrutinizes the Corporate Social Responsibility regulations including the concept of prescriptive and self-regulation to pinpoint the limitations of CSR regulation. The paper recommends a dynamic, responsive, effective, and coherent framework called the 'inclusive regulatory model' for improving and refining the accountability in CSR practices. This paper conducts qualitative research to propose a distinct and dynamic regulatory model for improving CSR regulation. The article finds that without 'sustainable stakeholder engagement' the promotion of CSR through prescriptive and self-regulation is ineffective.

2. The Convergence of Corporate Social Responsibility and Corporate Governance

CSR deals with economic, social, environmental, and stakeholder responsibilities that the corporate body is obliged to undertake in its actions and activities (Peter, 2010). "CSR is 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" (WBCSD, 2002). Corporate Social Responsibility has become an increasingly fashionable field for corporations and it has been part of their common consciousness and practices. CSR has entered into the domain of "non-governmental organisations and policymakers" as a potential mechanism for the achievement of the objectives related to social policy and promoting economic improvement and development. For sustainable development, CSR is the foremost mechanism for tempering and shaping the power and behavior of a corporation (Moon, 2007). CSR is also popular among "civil society actors and policymakers." The policymaker and civil society actors embrace CSR because it is associated with a "voluntary model such as codes of

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conducts, schemes related to private certification, triple bottom line reporting, principles of intent, and public-private partnerships" (Clapp, 2010; Elkington, 1998; ISO, 2010).

CSR is the chief and foremost essence of corporate governance and new corporate businesses as it can maintain the "long-term sustainability of a socially responsible corporate culture." CSR rests well with the new trends of corporate governance more specifically; it has contributed to broader the prospect of corporate governance by modifying the traditional corporate governance culture. CSR assists corporate governance to pursue "corporate management" for achieving high and public policy goals (Gordon, 2010). The relationship between CSR and corporate governance is evolving (Lawrence, 2007). CSR and corporate governance hold legal and economic features and such can be altered by the socio-economic process (Andrei, 1997). Even though both are complementary and have a very close link with the "market forces." However, CSR and corporate governance both have different aims and objectives but they can assist each other in accomplishing each other's goals even though both have different corporate frameworks (Lawrence, 2007). The rights, responsibilities, and roles of the directors of the company have great significance in the framework of corporate governance. More specifically, in corporate governance, the board of directors designs the policies and strategies that ensure the corporate management fulfills its social responsibilities (Lawrence, 2007). After the emergence of CSR, the role of corporate governance has been extended and CSR has reformed the concept of a board of directors as the "board as manager" (Melvin, 1982).

3. Regulations of Corporation Social Responsibility

Regulation is the system of rules, instructions, and guidelines that protect the "economic order, steer moral persuasions, and direct business behavior" (Cane, 2003). Regulations also include the strategies, institutional and international principles, models, principles of the market, or covenants planned to affect socio-economic activities and conducts (Anthony, 1994). The main purpose and functions of these regulations include: keeping and maintaining a peaceful environment and social harmony, the resolution of conflicts, and allocation of resources (Blackshield, 1983). However, the regulations in CSR are categorised as self-regulations and prescriptive regulations.

3.1 Self-regulation

Self-regulation is a complement to "formal governmental regulation" as it is encouraged by social groups, businesses, and international agencies (Christine, 2002). Self-regulation has a diverse conception and it has a mechanism that retains its functional stability. Self-regulation broadly with context to corporate regulation is defined as "part of the process of homeostasis by which a system regulates its internal environment to maintain a stable, constant condition employing multiple equilibrium adjustment, by interrelated regulatory mechanisms" (Elizabeth, 2008). In a narrow definition, self-regulation is the set of rules and regulations and rights of the practice of business that is enforced and executed by the companies or professional organisations (Anthony, 1994). However, self-regulation is also defined as the "corporate code of conduct" (Eddy, 2006).

Self-regulations are expectations of standardised behavior, morals, ethics, and responsibilities and are legally non-binding (Saree, 2002). Self-regulations are basically the commitments to

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perform elevated standard behaviors that are not actually set by the law of the state. These are the code of behaviors, voluntary disclosures, rules of conduct, decorum, corporate cultures, reporting requirements, and non-financial auditing (Zerk, 2010). Self-regulated CSR promoters argue that self-regulation modifies the behavioral and ethical requirements according to the expectation of society as well as self-regulation maintains creativity and adaptability in the business. Furthermore, it helps to achieve socio-cultural imperatives as well (European Commission, 2001). The foremost significance of self-regulation is to reflect the opinion of public and corporate practice as well as to strengthen the prescriptive regulations (Paul, 2000). Due to this approach sufficient certainty and reliability in the implementation of legislation and its interpretation by the courts can be achieved.

3.1.1 Limitation of Self-regulation

There are certain limitations of self-regulation that include: "limited scope, lack of reasonable commitment, vagueness in monitoring and compliance mechanism, exclusionary top-down approach, no proper remedy and compensation to the sufferers of the irresponsibility of the corporation." The limited and narrow self-regulation scope and coverage is considered one of its main limitations. Generally, multinational corporations participate in it while medium and small-sized corporations very rarely become part of it. However, combined activities of the small and medium-sized corporations have a great social impact but they usually are not a part of it (Utting, 2005). Additionally, the voluntary initiatives are not integrated into participating companies' everyday life (Ihugba, 2012c). Relatively, the CSR undertakings and activities of these corporations are ordinarily more reactive to investigation and hash legislative sanctions (Field, 1999). Consequently, it is stated that self-regulation commitment is somehow weak and it is needed to be more robust by "monitoring and verification" (Krut, 1998).

"The exclusionary top-down approach" is a significant limitation of self-regulation. Due to the "exclusionary top-down approach," the low-level and external stakeholders are usually debarred and are not included in the formulation of codes of self-regulation (Bendell, 2004). Resultantly, due to this limitation, the concept that self-regulation promotes voluntary involvement and imposition is seriously overwhelmed.

With more specific reference to multinational corporations, the "introspective self-regulatory CSR initiatives" are invoked due to the absence of engagement of low-level and external stakeholders. The introspective initiatives in fact have great negative impacts on the socio-economic development of host states (Utting, 2005).

In the end, Organisation for Economic Co-operation and Development (hereinafter OECD) states that voluntary agreements on the responsibility of the environment submit and recommend that the non-binding and lack of sanctions which are features of self-regulation promote the "regulatory capture" even due to such features the agreements are disregarded by some companies (OECD, 1999). It can be observed that the self-regulatory approaches are very least effective without reliable and reasonable sanctions and credible monitoring of non-compliance.

3.2 Prescriptive regulation

Mandatory and binding statutory laws and decisions of courts are included and are part of the prescriptive regulation. Prescriptive regulations protect society from the misconduct and irresponsible conduct of the corporation.

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The concept of CSR is normative as it discusses and deals with the obligations of a corporate body towards society and describes the way of meeting those obligations (Wettstien, 2009). Both the moral and ethical obligations are regulated and are viewed in the light of CSR. The binding capacity of CSR cannot be derogated in absence of legislation. Moreover, it is also argued that CSR is inherently voluntary and it must be endorsed and encouraged as “compliance beyond the legislative standard.” Consequently, its codification is unsound, unreasonable, and must be strongly criticized (Levitt, 1983). This concept although is limiting the scope of CSR only to philanthropy or moral expectation.

Prescriptive regulation encourages the protection of environmental pollution as well as affords the necessary remedy and sanction where such is required. The foremost characteristic of prescriptive regulation is that it not only encourages but also promotes “social responsibility.” However, the enforcement of prescriptive regulation has been proposed. The degree of severity and enforcement of prescriptive regulation range from self-regulation initiatives that include the code of behavior and conduct that are recognised by statutes. For instance, section 172 of the Company Act 2006 of the United Kingdom requires the director of the company to be aware of stakeholder and environmental interests while accomplishing the corporate interests. Consequently, it can be assumed that the discretion of the corporate body is no longer working.

However, it is also argued that there must be the introduction of sanctioning either as a disincentive to the irresponsibility of the corporate body or incentive to CSR ((Ihugba, 2012c). In short, it can be concluded that a corporation will relent in the voluntary exercise of CSR without the “imposition of sanctions” and “effective and operational monitoring and enforcement.” A similar argument is developed by European Coalition for Corporate Justice (hereinafter ECCJ). ECCJ states that:

> “The laxity in regulation and failure of market forces to control and maintain trust in financial transactions gave bankers and market players a wrong impression of invincibility and its consequential global financial crisis. The coalition concluded that an effective way to stem reoccurrence is to introduce heavier regulation with clearer rules and more oversight by public authorities (ECCJ, 2010).”

However, before recommending and endorsing prescriptive regulation there is a need to carefullty understand the dynamics of CSR and its regulation as there are certain limitations of the prescriptive regulation as well.

4. Refined Regulatory Framework of Corporate Social Responsibility

The regulation of CSR will be more effective and operational when it will have the ability to regulate and control the external consequences of the activities of the corporate body as well as its integral corporate governance and the process of the business, i.e. the internalisation or manifestation of the strategies of CSR in the decision making of a corporation, production process, the mechanism of the delivery and services, the relationship between corporate-stakeholder and the employment strategies. Additionally, CSR regulations must stop the unfair, illegal, and unjust practices within the corporate body.

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"The responsive, coherent, and effective CSR regulation" should be made. These CSR regulations must include national and international laws. More specifically, concerning national laws, the countries like Pakistan, India, Indonesia, Nigeria, and Bangladesh could particularly enact "responsive, coherent and effective regulations" to combat their issues related to illegal wages, child labour, environmental pollution, forced labour (BBC, 2013; UN, 2004). The countries like the UK that have matured economically had already acknowledged and recognized the existence of some indirect effects of unfair, illegal, and unjust corporate practices. This can be evinced by Section 172 and 417 of the Companies Act 2006 of the UK as both sections require the directors of the corporate bodies while making the decisions regarding the management should consider the effects of such decisions and the company's activities on the stakeholders of a company.

On the other side, International law can help in setting the "minimum international standards" by ensuring that the corporate bodies should meet the "optimal responsibility level" regardless of the effectiveness of the legal system of the host state. Such development will decrease the existence of "double standards" that basically exist to a great extent between the developing and the developed states (Donovan, 2010). Due to setting the minimum and optimum international standards along with the central enforcing body, it will become less challenging to hold the companies accountable.

There are very few cases where some multinational companies and domestic or national companies had afforded the intimidate governments. This is due to the success of the "Universal Declaration of Human Rights" (UDHR hereinafter) which not only demonstrates but also determines the potential of international laws. The worldwide measures of human rights standards, in present days, are encouraged and endorsed by UDHR. The establishing and launching of such standards in areas that are covered by the CSR principles will promote the corporations to comply and also ascertain numerous states to monitor and implement them.

Particularly, international law should intervene in areas including "the protection of the environment, women's rights, the safety of the products, the protection of consumers, impacts of corporate practice and products on security, wars, corruption, irresponsible speculation, bio-safety, and breaking down of unmanageable and awkward monopoly." However, European Union by following this approach tried to enact such laws to regulate financial transactions in member countries as such an effort was supported by France and Germany but was resisted by the UK. (Paul, 2000)

Some essentials are necessary to be followed for the implementation of good regulation. Firstly, "regulation's effectiveness," which is directly proportional to its enforcement. The effectiveness of the regulation is possible when the implementation and execution of it, is possible and is financially viable otherwise it would be impossible for society to enforce such regulation. For example, the high cost of the enforcement of the regulation is the main argument against "prescriptive regulation" (Gunningham, 2005). The cost of CSR initiatives' implementation is always a topic of debate as the high costs discourage corporations from CSR. A similar attitude of corporations will be towards the CSR law so the laws of CSR should not have "considerable financial outlay" and such laws will be more effective if they will make a moderate financial sense for the enforcement of regulations (Cane, 2003; McBarnet, 1997).

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Secondly, "regulation's responsiveness" needs that the regulatory provisions should be aligned with social reality. The responsive law acknowledges social aspiration, as well as such law, does not jeopardize the necessary practices of the society (Cane, 2003). To this end, the regulations should be fully involved and assimilate the concerns and values of the social milieu. It is difficult to improve the responsiveness of regulation without such strategies however, without following it if the regulation is enforced it can lead to "social injustice, regulatory failure, and social collapse or disintegration" (Ihugba, 2012c; Gunningham, 1998).

Lastly, "regulation's coherence," which describes that regulation is coherent and rests well with the principles of justice and existing doctrines of law. The regulations should have coherence and sit well with the fundamental principles of human rights, accountability, proportionality, procedural impartiality, and their enforceability should be guaranteed by the constitution of the state (Cotterrell, 1995). There is also a need to sustain the optimal balance between the effectiveness, responsiveness, and coherence of the regulation as the disproportionate, unbalanced, or unstable emphasis of any one of all these may cause unintentional social agitation.

4.1 Inclusive Regulatory Model: A dynamic approach

The regulation that can be applied to self-regulation and prescriptive regulation is known as an inclusive regulation which is a more dynamic and prudent approach although it is not a kind of a regulation per se. However, the inclusive regulation is a model for establishing, developing, and enforcing the regulation as well as it also maintains the effectiveness, responsiveness, and coherence of a regulation. This model is not only capable of ensuring the enforcement of the law but also disregards and eradicates the issues related to the high costs of enforcement. Several functions are performed by the inclusive regulatory model that is discussed below:
The model ensures that the new rules related to stakeholders' engagement should be drafted by the participation corporate body and stakeholders. This participation firstly will ensure the drafted rules should rest well with the interest of both parties and secondly such participation will also be considered as an undertaking for being bound by the drafted rules. Consequently, this will also help in accountability of the defaulting parties as well as will promote an environment of equality, justice, and fairness. Additionally, such stakeholders' engagement will also encourage the parties to communicate their interests.
Prescriptive regulation will be the one that can guarantee the execution of these parameters due to its power of sanctions and enforceability. However, the procedure of stakeholder engagement will be covered by the prescriptive regulation, while the substantive engagement will be covered by self-regulation. In this way, prescriptive regulation will encourage fairness and a predictable atmosphere for equal engagement. This will also provide validity to CSR regulations as well. Setting minimum standards, forbidding the actions that are damaging to the interest of stakeholders will be done by the self-regulation model and it will also encourage social responsibility. Due to this, the corporate bodies will be stimulated to perform positive actions.

The other way is to "decentralize the power of enforcement" because one of the foremost banes on the execution of the regulation more specifically prescriptive regulation is, the ineffective

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enforcement and execution of the laws. The main defect of the prescriptive regulation is the high cost of its enforcement (McBarnet, 1997). The best way to enforce the prescriptive regulation is to decrease its cost and make it inexpensive and easier for corporations. The enforcement of it should only be expensive for the defaulting corporations. In this way, the effectiveness of the laws can be increased as reasonable, less, or minute fines are not effective deterrents (Donovan, 2010). Due to this the competitive strategy will be promoted among the companies. This will also promote the judicious prosecution as before initiation of legal action it will require to produce valid and authenticated evidence of constant corporate irresponsibility of the defaulting corporation.

Lincoln Law of the USA which is named “the False Claim Act” is an exemplary law due to which the USA remained successful to deter fraud against the treasury of the public. The purpose of this law is to impose liability on a corporation or on an individual who takes part in defrauding the programs of government. Similarly, this approach can be utilised for the one who incorrectly reports corporate irresponsibility. Even a compensatory system must be introduced so that falsely reported companies must be compensated. In contrast to it, if it is proved that the accused corporation has been successfully convicted of corporate irresponsibility then it should be punished as well. In a case, when the individual reporting corporate irresponsibility is financially weak and cannot afford prosecution and it seems from the initial perusal of evidence before the institution of litigation that corporate irresponsibility has likely been committed then the accused company should bear the cost of prosecution. Moreover, a scheme of the insurance fund of CSR should be established and the cost of prosecution should be paid from it. Consequently, the corporations will comply with laws when they would know that prosecution cannot be deterred due to the absence of cost.

5. Conclusion

Corporate social responsibility being the essence of corporate governance is capable of marinating the socially responsible corporate culture. CSR and corporate governance sit well with each other and CSR can promote corporate governance for the achievement of public policy goals. However, there is a need to improve the effectiveness, efficiency, and responsiveness of prescriptive and self-regulation as the regulatory framework for the advancement, upgrading, and promotion of CSR. Undoubtedly, there is also a need to revise and revisit prescriptive and self-regulation by developing an inclusive and more dynamic regulatory framework. In this way, an inclusive regulatory model has been demonstrated for the enhancement of responsiveness, effectiveness, and coherence of CSR regulation through the participation of stakeholders. Moreover, for the better implementation of laws, there is a need to diversify the ‘enforcement mechanism’ to empower and strengthen corporations and individuals. Additionally, the state should take part in the proper implementation of such laws. The prescribed inclusive model has two main benefits it could help in improving business practices as well as it can help in establishing good corporate regulation.

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