



RESEARCH PAPER

Legal and Regulatory Framework of Corporate Social Responsibility in Pakistan

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ABSTRACT

This research paper explores whether any remedies are existing to the stakeholders in case if companies do not observe the implementation of CSR regulations. All the citizens of a state have some obligations as well as legal and moral rights. The world "citizens" include not only natural persons that is human beings but also the Legal entities like corporations etc.it is obligation of companies to perform functions effectively as responsible corporate citizens. In recent era, corporations cannot escape from their legal duties because their business activities having extra tri-dimensional effect on the society at large. The CSR (Corporate Social Responsibility)is the assurance by the corporations to act justly and contributes to economic growth while refining, improving and humanizing the quality of life of workers and as well as their dependents/ legal heirs and also the society. This research aims to disclose the level of CSR in the Pakistan. The idea of CSR is not compulsory activity has been highlighted. When we talk about Pakistan, enormous companies have basically been supporting CSR practices by choice in different forms such as charities and such like practices. According to the supporters, compulsory form of CSR can be properly carried out by legislation. In this research we shall try to analyze relevant provisions of statutes, laws, SOPs, rules, regulations and guidelines both at domestic as well as international level. Further the research will explore and highlight the significance of CSR, its proper implementation and reformation of laws.

Keywords

Corporate Social Responsibility. Security and Exchange Commission of Pakistan, Multinational Companies, Local Companies, Non-Governmental Organization

Introduction

The concept of CSR has been introduced in the last fifteen to twenty years. Various Employees, Academicians, Scholars, Government Representatives, Non-Governmental Organizations (NGOs) and International Organizations are envisioning CSR role which they have to play in Corporate Sector. Different legal statutes have been drafted that will help socially responsible behavior of Multi

National Corporation (MNCs) and Local Companies (LCs). International Organizations have framed CSR principles; MNCs as well as LCs follow programmes. They have also framed mission statements regarding CSR. These efforts are shared by their reports. Different NGOs are published write ups and reports on CSR. These write ups and reports helped LCs and MNCs to work more effectively. The legal scholars and academicians have also analyzed all aspects of CSR in their research articles.

The subject of CSR also related with many other areas of legal systems that is. European Legal system, International Law, Corporate Governance, Law of Contract, Corporate Law, Law of Torts, Labour Law, Environmental Law, Criminal Procedural Law, and Criminal Law. Needless to say that the above said areas are contributing to the progress of CSR and above laws respond to the serious tasks facing by the Society and Corporate Sector. The European Law covers many areas; it deals interesting insights while developing CSR course and it guides all legal aspects of CSR.

CSR is a subject of discussion for Scholars, Management, Business Organizations and Consultants for the last few decades. The phenomenon emphasizes the role of business towards the society's betterment. CSR provides standard behavioral rules which assist the Corporate Organizations to adopt productive and positive manners for the development of the corporate responsibility, society, advancement and corporate citizenship. In modern time CSR is a burning issue in all companies and Board of Directors (BoDs) and Chief Executive Officers (CEOs) are discussing CSR role and its principles. How their organizations and companies can contribute to society for its betterment and advancement? Currently in corporate business, social responsibility is one of the key factors for any company. In the Europe and West CSR has become a standard for LCs MNCs, and other corporate sectors.

In our country, CSR is still a new concept for individuals and organizations. In business here in Pakistan, the above said legal concept of CSR is either ignored or mis- understood by concerned people. We can say, the concerned individuals and organizations are not able to interpret it correctly. But some MNCs working in Pakistan are advance in this field, because of their national as well as international associations. They are implementing the standards and principles followed in their company headquarters in the modern states of the world.

Historical Evolution of CSR

In the history the corporations never felt that they were accountable towards the society for their environmental issues and activities. But currently we observe a major change from that customary approach of the corporations towards the corporate social responsibility. It is notable that in last 20-25 years, MNEs have done significant deviations to their corporate responsibility strategy and policy. The historical development of the concept of CSR can be concluded in following steps. Firstly there was a great social pressure against the corporate bodies and state to be held responsible for the tribulations they do to the society and environment. In early 1960s, "Friends of Earth" was founded that 1st Earth Day was organized in United States of America. During 1980 to 2000 (last 20 years of preceding century), many cases of labor rights, human rights and corporate corruption violations were informed all over the world which elevated the concept of CSR concern among the people relating the activities of many companies and corporations and thus a well-

defined form of corporate social responsibility started to figure. In Pakistan the concept of CSR in its initial stage. A lot of work is required in legislative and regulatory aspects of CSR in Pakistan. The SECP as a regulatory authority introduced corporate social responsibility SOPs guidelines in (2003) and then CSR General Order (2009). But the authority of these guidelines, SOPs and Order is optional and not mandatory for the corporations. Mostly the MNCs are following CSR activities due to their connection to the company head office.

Socio Economic context of Pakistan Regarding CSR

The state of Pakistan is a large state having variety of cultural, multi belief, variety of lingual and economically pathetic state located in Southern part of Asian continent. All governments in Pakistan during their regime, except the government of Pakistan People's Party during their period comprises of five years (1972-77) adopted the canons of a market economy and concentrated on industrial development that contributed to the state economy of the Pakistan. The government of Pakistan has presented many legal statutes to regulate the major environmental and social characteristics of corporates performance and to regulate the disclosure of environmental and social information, but in Pakistan due to lack of legal framework and mechanism the state fails to ensure compliance of CSR. In fact it was a great hurdle in economic and social growth. The main reason behind noncompliance by the local corporations in Pakistan is lack of awareness and no incentives from the government side.

Legal and Regulatory Aspects of CSR in Pakistan.

The existing legal structure of CSR in Pakistan is very weak a lot work is required in this aspect. The institutional and legal framework of CSR .in Pakistan mostly related to environmental and social activities of the corporations.

The regulatory authority in Pakistan is SECP. The SECP has issued an Order Corporate.Social.Responsibility|GeneralOrder|2009.But the authority of this Order is not mandatory this is optional for the corporations. The Corporations in Pakistan are not bound to adopt this General order of SECP.

Enforcement of Pakistani Law

In the start of this research, it is presumes that legal framework relating to corporate social responsibility activities is not present in Pakistani legal system. But during the research work, it was revealed that in different law like laws relating to labour, environment and contractual term and conditions among the parties, there exist the legal framework relation to CSR. It is quite clear that CSR is an area, which requires great intention of government in Pakistan. And the legislature has to make effective laws relating to it in country to meet modern era challenges like environmental pollution from sale and use of petroleum. For the proper implementation of CSR in Pakistan it required proper legislation related to CSR as in others developed countries because the existing laws failed to compel the corporations to fulfill CSR .As the CSR are voluntary and not mandatory in its nature, it is ironical up to some extend to suppose and to discover the legal frame of CSR. Though it does not mean that CSR is freefall concept in legal system that is unchecked by resistance of law. It is very important to note that many SOPs, guidelines and regulations must be there for setting out, implementation, establishing and

enforcement of CSR activities. There must be some legal remedy and to take penalties where the notion of CSR is not adopted entirely or partly.

Constitutional Articles related to the matters of CSR

Article 11 of the constitution of Pakistan provides the freedom to form unions and associations.

Article 17 of the constitution of Pakistan provides the prevention of sexual discrimination.

Article 25 (2) of the constitution of Pakistan provides the provision for safe working conditions

Article, 37(e) of the constitution of Pakistan provides the provision of social security, welfare, and old age benefits and the protection of environmental and consumers rights

Article 9A of the constitution of Pakistan provides the provision of The legislation related to labour issues the Factories Act 1934

The main legislation related to the protection and preservation of the environment is the Environmental Protection Act, (PECA) 1997.

So we can say that in Pakistan there is no proper hard form of CSR legislation as in others countries but all these legislations having indirect link with CSR activities of the corporations.

Case Law: The Supreme Court of Pakistan

The Supreme Court of Pakistan announced a historical judgment on CSR activities of the corporations in year 2013. The case related to the OGRA. The applicant claimed that corporations in Sanghar are working in unlawfully. The corporations are violating the terms of the contracts which they signed with the Federal or Provincial Governments.

Judgment of the Supreme Court

After checking all the records of the corporations and listening to the applicants Supreme Court decided that all the corporations are responsible for their activities towards the society and bound by the terms and conditions of their contracts which they executed. The Supreme Court ordered Companies issued an annual report about their social welfare obligations. The Supreme Court announced this decision under the authority of Article 184 (3) of Constitution of Pakistan.

Legal Remedied in case of violation of CSR activities

The Supreme Court decision set an example of legal remedy in case of violation of corporate social responsibility activities by the corporations under the jurisdiction of Article 184 of the constitution of Pakistan. An applicant can move to the court if corporations are working in violation of the terms and conditions of their agreements.

In so far as legal remedies in case of violations are concerned, it has been divided in three categories, these remedies are available

- to Public at large
- to the Governmental Departments
- to employees of corporations

In case of first, the general public can avail the jurisdiction of Article 184 (3) of the Constitution of Pakistan to take action against the misdeeds being committed by Companies and to order them to compensate the results of those commissions or omissions.

Furthermore, the employees of a Corporation can take actions in labor court against their employers if they are working in violation of the labor laws of the state. The federal and provincial governmental departments especially which grant the license to the corporations to conduct business in Pakistan has powers to suspend their license if they violates the terms and conditions of issuance of license under any law to get such license.

Mandatory Nature of CSR

The Principle of Mandatory nature of CSR established in this landmark decision of the Supreme Court. The concept of CSR is not optional but mandatory for the corporations. This judgment was a new innovation in Pakistan in the field of CSR and we can say it was first step to the development of CSR here in Pakistan.

The decision made it clear that the people of the society where the corporations are working can also point out the violations on the part of the companies. There is dire need to jump from voluntary stage of the CSR to the mandatory stage of the CSR as in other countries.

CSR and Corporate Governance

The most important fact is that corporations that having the practice of good corporate governance are also those that are environmentally and socially responsible companies. **“Being a good corporate citizen means that companies have to be internally well governed and externally responsible. In other words, CSR and corporate governance are two sides of the same coin”** It means that internal democracy which is corporate Governance and external responsibility which is corporate social responsibility go hand in hand. It is necessary that corporations must have good practices for proper implementation of CSR. The doctrine of corporate governance should be considered while formative CSR disclosure especially board members and ownership structure because CSR reporting is only affected by the values, motives, and choice of board of directors.

Theoretical Framework of Corporate Social Responsibility (Models of CSR)

Two schools of thought are present about the concept of responsibility of a trade/business enterprise. Firstly shareholder theory and secondly socio-economic model of CSR or the stakeholder theory of corporate governance.

Shareholder Theory of Corporate Governance

This school having a conservative point of view about the concept of CSR that the only main object of a corporation is to earn profits for their shareholders or owners. **Milton Friedman**, a receiver of the Nobel Prize and an economist, in 1962, introduced the fundamental principles of the economic model in his doctrine of CSR found in his book "Capitalism and Freedom". Another famous writer Richard Posner in his book "Economic Analysis of Law" mention CSR just as a cost to the corporations in competitive market and reduction in profit of business sectors. According to him we cannot expect from corporations to perform the corporate social responsibility activities.

Stakeholder Theory of Corporate Governance

This school favour the concept of CSR must be adopted by the corporations. The promoters of this theory argue that business sectors are responsible not only towards their shareholders or investors but also to their stakeholders.

The definition of stakeholders is, the customers, the community in general, employees and suppliers and where the corporations having their business activities. A business management professor Mr. R Edward Freeman was an American philosopher. He introduce the stakeholder theory in his book in 1984. He was first to do this work. His work named as "Strategic Management: A stakeholder approach". In his work he provided a mechanism for addressing the ethical and moral duties of business community.

Concept of CSR in Islam

The theory of CSR has a vast historical background in Islam. The idea of CSR along with the practice on CSR activities can be found from centuries ago in the Muslim world. The conducts of corporations under the guidelines of the Holy Quran & *Hadith* of the Holy Prophet ﷺ as well as the other Muslims are clear evident regarding their focus on social responsibility. The concepts of *Zakat* & *Sadaqat* are well recognized fact in this regard. On the other hand, in the western countries as well as in USA, this concept was under discussion in the 20th century, especially in the last 50 years.

The idea of CSR is not new one to Islamic legal system, and it is available in *Shari'uh*. Islam by the concept of viceregency (*khalifah*) envisages business community as stewards or caretakers, not only for the shareholders' financial assets, but also of social economic assets, holding their property in trust for the benefit of society as a whole and eventually achieving the blessing of Allah. So Pakistan as an Islamic state should adopt the concept of CSR as it is part of our religion. We should start an awareness campaign in business sectors that CSR is not a western concept it has deep rooted in Islamic history.

Conclusion

The CSR is almost nonexistent concept in third world state like Pakistan. Although there are some departments associated with carving out the rules of procedure for the effective enforcement of CSRI, no institutional sector was found to be appropriately working and struggling to compel corporations to follow those guidelines, SOPs and rules. The federal as well as provincial governments required

to play their role in this regard with the help of national and international NGOs. If CSR is supported out effectively in Pakistan, many unaddressed and neglected areas in the public domain can be upgraded and improved. So there is need to move from voluntarily stage of the CSR towards the mandatory form and that is only possible by proper legislation related to CSR activities. We have the examples of others countries having the mandatory form of CSR like India, France, United States of America, United Kingdom and Denmark. It is essential for Pakistan to jump from its current situation of CSR. It's time to move from CSR theory towards CSR practices. If there is no possibility of separate legislation on CSR amendments can be suggested in the recent Company Act as India made amendments in their company law related to CSR can be enforced by the recent company law of Pakistan by amendments. In the past history, profit making was the main business goal but this vision no more exist in modern days. If business wants to sustain and survive development in the marketplace, if they want to become market leaders, they have to spend some portion of their profits in favor of the society along with shareholders. In India, for establishing a better future the Indian government has brought in to affect new CSR regulations compelling the corporations to spend 2% of their annual profit on the development of society. India become the first state in the world to mandate corporate social responsibility. Spending 2% on CSR is a lot, especially for corporations that are struggling to improve their business profit in these difficult times.

References

- Ahmed, J.(2006). Principles to practice: exploring corporate social responsibility in Pakistan, *Journal of corporate citizenship*, 1(24),115-129.
- Ali, Z. M.(2013, September 16), Lack of corporate social responsibility in Pakistan: *Dawn News*,
- Arifeen, M. (2018, January 15). CSR development and achievements in Pakistan, *Pakistan and Golf Economist*
- Dusuki, A. W. (2008). What does Islam say about corporate social responsibility? Review of Islamic Economics: *Review of Islamic Economics*, 12(1), 1-28
- Freeman, R.E. (1984). *Strategic Management: A Stakeholder Approach*. New York: Harper Collins press.
- Hassan, Z. (2009). *Corporate social Responsibility: Western and Islamic Perspective*, International Review of Business Research. New York
- Jhawar, N. S. (2017). Understanding CSR- Its History and the Recent Development: *Journal of Business and Management*. 19 (5), 105-109
- Köpper, J.(2010, October 10), *Guide to CSR in Europe: CSR Europe's National Partner Organisations*
- Lambooy, T. (2014). Legal aspects of corporate social responsibility: *Utrecht Journal of International and European Law*: 30(78), 1-6 <http://doi.org/10.5334/ujiel.bz>
- Posner, R. (1984). *Economic analysis of law*. Washington university school of law press.
- Sajjad, A. (2014). *Corporate Social Responsibility in Pakistan: Current Trends and Future Directions*. Massey University, Albany campus, New Zealand:
- Yu, S. & Zia, M. (2019). CSR in Pakistan: A legal perspective with Reference to MNEs: *Journal of Politics and Law*. 12(3), 1-18, <https://doi.org/10.5539/jpl.v12n3p87>
- Yunis, M. (2017). Corporate Social Responsibility (CSR) in Pakistan: A Critique of the Literature and Future Research Agenda: *Business and Economic Review*, 9(1), 65-88