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Legal Transition, Ethical Corporate Social Responsibility, and Environmental Challenges in Pakistan

Abstract

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Keywords: Legal Transition , CSR , Environmental Issues , Global Standards, Paradigm Shift , Abstract System

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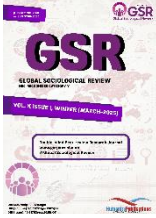


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Legal Transition, Ethical Corporate Social Responsibility, and Environmental Challenges in Pakistan

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Abstract

The Concept of Corporate Social Responsibility (CSR) is purposed at ensuring business activities are responsible to society, alongside making a profit in businesses. CSR has been marked as a soft law obligation of businesses towards society. However, in recent years, the environmental challenges being faced by the world, particularly the developing world, including Pakistan, require consideration of a transition from a soft law approach to a hard law one. This article sheds light on challenges to the soft law approach while dealing with environmental problems in Pakistan. Although the environment is an international issue and requires to be dealt with internationally, it is argued in this article that consideration of a hard law approach in this regard may bring forth some of the solutions to this menace in Pakistan.

Keywords: Legal Transition , CSR , Environmental Issues , Global Standards, Paradigm Shift , Abstract System

Introduction:

An historical Perspective of Ethical Business

The concept of ethical business activities emerged from religious obligations of doing good to society, which was considered a virtue and a rewarding act. The modern concept of ethical business emerged in the 1800s and entered the popular regime of

responsible business activities in the 1950s, when ethical and socially responsible businesses were emphasised as a sustainable business management strategy. Some events, such as Environmental and consumer movements, paved the way for CSR in the 1960s. The concept gained further business and societal approval after Archie Carroll's pyramidal approach towards business activities. Further, in the



1980s, occupational health and safety requirements emerged with the recognition of CRS Codes and formalities in businesses' policy frameworks (Friedman, [1970](#)). Moreover, ethical business practise was further formalised with the introduction of standards like ISO 14001, SA8000, and other Corporate governance codes in the world. The 20th century dawned with the introduction of CSR policies, codes, and principles on ethical business requirements in corporate governance strategies.

The CSR impacts are measured with the fallout outcomes of businesses on society and the environment. Where CSR was neglected and left indelible impacts on the environment and on the ecosystem of this planet, evidenced by the WWF's Living Planet Index, which shows that some 27 percent of the species are now extinct on this planet since 1970. Moreover, more than 60 percent of the ecological imbalance has been caused by the negative impacts of unethical business operations. According to the UNDP report, about one billion people have no access to safe drinking water, and more than two billion do not have better sanitation facilities (Visser, [2010](#)).

Theoretical Underpinning of Imperative CSR Policies

The success of the CSR campaign is not due to the bad intent of businesses; it depends on the flawed CSR policies and flawed economic designs, which call for an abstract system without limitations. Some economists term this system a cowboy economy where there is no respect for the environment, waste disposal, or preservation of natural resources (Visser, [2010](#)). Capitalist economy model supporters have reservations on CSR as they believe that investment of owners of the companies by the executives, other than their own profit-making, is not justified. Despite these reservations and questions, it is now important to incorporate CSR in business strategies, considering the wastage of natural resources and environmental hazards society is facing, particularly in developing states like Pakistan.

Stakeholder theorists believe that business success and gains are required to be shared with other

stakeholders of the business. As such, CSR has different activities and responsibilities for different localities and issues. The application of CSR policies on a voluntary basis leaves questions on the incorporation of CSR policies and the verification of the audit reports of corporations. Some other issues that require further clarification and regulation in this regard are the volume of spending and the extent of responsibility that companies owe to the environment and society. Moreover, corporate spending on a particular CSR issue may develop reservations for a specific segment of society, which may boycott products of that company, considering it against their fixed norms and culture (Kotler & Lee, [2007](#)).

A positive relationship between CSR and business sustainability has been established in a number of studies. From a financial and reputational aspect, CSR has proved to be a sustainable business strategy. Therefore, corporate denial of CSR issues may cause some serious business operational challenges in terms of financial and reputation damage to the corporations. Some other problems might be striking a balance between the interests of different stakeholders and the investors (Orlitzky et al., [2003](#)). Moreover, the lack of an international legal framework adds further problems to the enforcement issues of CSR. In this context, guidelines of international protocols and agreements on environmental protection can be relied on and taken into consideration for framing an international legal obligation for the states to follow.

Corporate hiring is a major problem for corporations to address, as it involves new recruitments and training, where the existing trained and staff embedded with ethical business norms leave corporations that are involved in environmental violations. Such a talent in employees, customers, and investors who are more prone to environmental protection prefer corporations to spend money on looking after the environment around them. Companies gain a good name when using a legitimate source without polluting and damaging the environment affected by the operation of the corporations. Thus, the economic benefits of

companies are very significant and are measured by external evaluation as a responsible business.

Moreover, when corporations share the burden of governments and behave responsibly in business operations, assessment for governments to identify the quantum of the problem becomes easier. Therefore, CSR helps governments to meet their agendas on decreased operational costs in waste management, recycling, and conservation of natural resources. Most importantly, CSR now adds value and sustainable business trends. For example, the world is moving towards electric vehicles, which are CO₂-friendly, and customers are attracted towards this positive shift of environment friendly vehicles. This is a very positive and healthy business trend which has been warmly welcomed by the customers. The trend in the automobile industry has earmarked knock-on effects for other motor companies to understand the problem of depletion of natural resources and anticipate the necessity and importance of conservation of natural resources for the sustainability of businesses themselves. This has also pushed the world to move towards new, environmentally friendly technologies. The Royal Bank of Scotland is a striking example to mention, which is running a solar photovoltaic power plant for a safe and renewable energy resource, a sustainable trend in Spain. Moreover, the services of the Coca-Cola company in collaboration with the World Wildlife Fund are doing very significant work for the conservation of fresh water and its efficiency (Oliver & Oliser, 2010). This is evident by the number of studies that corporations doing good to the environment and preserving the environment are performing equally good rather stands better, in terms of financial improvements, than the ones that are irresponsible to the environment (Gourville & Ragan, 2004).

There are corporate scholars who raise questions about the utility of CSR in terms of corporate efficiency and sustainability. For example, Milton Friedman opines that corporate managers exploit corporate business activities under the umbrella of CSR. Moreover, he contends that the financial success of a company ultimately improves social utility as

well. He is of the view that a mandatory legal framework on CSR imposes an obligation on corporations to abide by laws on environmental conservation, which is ultimately the responsibility of governments. Moreover, in corporate governance models, managers are under a fiduciary duty to look after the interests of shareholders rather than taking into consideration issues being faced by society. In a CSR mandatory implementation regime, corporate managers would tend to violate the fiduciary duties they owe to their principals. He raises question to the compulsory spending on CSR, as without the consent of shareholders, managers are supposed to spend and make decisions other than profit maximisation of the company (Milton, 2002).

Furthermore, he is of the view that the concept of CSR has political impacts, where it tends to usurp the function of government. He further contends that business experts are not necessarily equipped with relevant expertise to assess the needs and chalk out policies regarding environmental pollution, which is, in fact, an international phenomenon. However, this objection to the concept of CSR is not justified, as the environmental aspect of CSR requires efforts both at the individual and governmental levels to address. Therefore, the private sector's role is very important in joining hands with the government to deal with this very important CSR aspect (Milton, 1970). He criticises the concept of CSR on ground of its legal limits, and if there turns out to be any violation of environmental law, then the government should intervene and enforce relevant laws on any CSR issue. Thus, he raises an objection to this concept on the principle that corporations have one original role, which is to protect the interests of shareholders and profit maximisation of the company, rather than investing in something for which the investors have not consented.

Despite these concerns raised by Milton Friedman, the utility of CSR has recognised and authenticated in a number of studies and by many corporate scholars. For example, Christopher Stone and Griffin hold a high value for the concept of CSR (Griffin, 1997). They opine that business damages environment, water, and soil in many ways; therefore,

they must be held responsible to make good the damage done by the operation of businesses and must take part in solving the problems caused by it. Only paying taxes does not absolve corporations of the bad impacts of business operations (Stone, [1975](#)). Thus, a positive relationship between CSR and financial improvement of corporations has been studied and found to be positive (Adeyeye, [2012](#)).

Legal Transition and Corporate Social Responsibility

Similarly, in legal frameworks of different countries, there is a demand for CSR to be included in business strategies. For example, the UK Companies Act [2006](#) provides for corporate managers to perform their fiduciary duties in terms of corporate financial performance, alongside doing a socially responsible business. Listed companies in the UK are also required to report the environmental aspect of CSR in their financial reporting. Moreover, the Act also provides for a provision of litigation against corporations if they are found in violation of six CSR matters in environmental protection listed in the law (Companies Act [2006](#)). Moreover, the US Sarbanes-Oxley Act [2002](#) also provides for business ethical practises in the business strategies of corporations in the US.

In a number of European countries, CSR is being dealt with through soft law and by legislative frameworks. There are positive trends regarding mandatory CSR issues, particularly on the environmental aspect of CSR in EU states such as Denmark, Germany, Belgium, France, and Netherland. In response to this positive trend of CSR in EU states, in 2002, the EU parliament passed a resolution pertaining to compulsory disclosure of CSR aspects on the environment, which was considered a landmark step towards compulsory consideration of CSR in EU states. This was also proposed in the resolution that CSR should be taken into account as a hard law subject in all EU states, alongside the terms of mandatory inclusion of CSR strategies in EU states such as France, Denmark, and the Netherlands. It is now a high demand that CSR be taken as a compulsory requirement of business operation and go

beyond the current framework dealing with environmental protection in the world. In Germany, disclosure of the ecological aspect is mandatory for companies to incorporate in their reporting (German Commercial Code, 289 HGB).

The Code further provides that non-financial aspects regarding environmental protection and ensuring the rights of employees must be included in their reports. Moreover, ISO standards are recognised by the German government. In France, the concept of CSR has been included in its legal framework, which requires companies to report on extra financial information on the Comply and Explain principle. The Comply and Explain principle requires companies to comply with CSR issues, and if they choose not to do so, they are required to explain the position. (Global Compact Network. 'Grenelle 11' Act 2012). Similarly, the Danish parliament passed a law that requires mandatory disclosure of CSR issues from companies (Ellis & Eder-Hansen, [2010](#)). South Africa and China are very active states towards CSR issues, where CSR is gaining the attention of legislators to include CSR in their legal frameworks.

National Legislation and CSR issues in Pakistan

There are private sector contributions and spending on CSR in Pakistan, but as a concept, it is considered a slow CSR state. The need of the hour is incorporate the mandatory concept of CSR in the corporate governance framework in Pakistan. As such, violations and abuses of CSR aspects, such as environmental pollution, depletion of natural resources, and those by the multinational companies in developing countries, have been subject to criticism. This is mainly due to a weak governance framework, the absence of a legal framework on CSR, and foreign pressure questioning social abuses on the part of corporations, violating relevant international law. It is now high time to incorporate a mandatory CSR framework by law in the corporate governance system of Pakistan, considering the dangers of environmental issues and global warming in Pakistan. As such, there are many factors that cause the ineffectiveness of the soft law approach on CSR. These include institutional disinterest in the

implementation of a soft law approach on CSR, incompatibility of those soft law guidelines with those of the relevant legal framework, a weak monitoring mechanism, and transparency issues.

Therefore, consideration of a soft law approach on environmental issues requires further justification because when shareholders are protected by law, why are the impacts of irresponsible business activities left to be dealt with by soft law? It is important to refer to the fact that now the corporate world holds more assets than some states in the world. For example, General Motors holds more assets than the assets of Denmark, IBM owns more assets than that of the state of Singapore, and Sony is bigger than the state of Pakistan in terms of holding assets; therefore, the responsibility of the corporate sector towards CSR issues must be disciplined by law (Anderson & Cavanagh, 2000). Thus, the corporate world must be made part of the solution, where they are part of the problem.

In order to learn from international CSR standards for devising CSR strategies in Pakistan, it is important to include strategies considering the local issues and the quantum required for specific solutions to the problem. ISO 14000 for environmental protection and the GRI reporting mechanism can be taken into account to set a yardstick for devising a CSR framework in Pakistan. In this regard, the guidelines of UNCTAD, WTO, and UN Global Compact can be instrumental in designing a CSR framework in Pakistan. The government of Pakistan may consider a participatory CSR strategy by improving regulatory oversight, engaging regionally and internationally, and incorporating both voluntary and mandatory CSR requirements. Pakistan is a signatory to the Kyoto protocol, which is aimed at

clean development across the world. However, the refusal of developed states such as Australia and the US discourages developing states like Pakistan from meeting emission reduction requirements. The current legal framework in Pakistan, such as the Pakistan Standard and Quality Control Authority Act 1996 and the Pakistan Environmental Protection Act 1997, should be amended in order to incorporate ISO9001 and ISO 14000 environmental protection standards.

Conclusion

CSR became a limelight issue after the wave of ecological issues in the world. The governments have to make decisions regarding making choices between preserving and protecting the environment and improving economies. In this article, the CSR issues and the efficacy of legal transition from soft law to a hard law mechanism have been discussed. A common usage of energy in Pakistan is burning wood for cooking purposes and stubble burning, which causes severe air pollution, harming human health in many ways. Although there is widespread charity and philanthropy work in the corporate sector of Pakistan, it must be institutionalised for designing CSR strategies as per the requirements of dealing with CSR issues, such as environmental pollution, depletion of natural resources, and deforestation in Pakistan because it is said that an arrow without a proper bow does not hit the target even if made with a diamond. The government alone cannot deal with problems, for the corporate world is responsible; therefore, the corporate sector must be made part of the solution for which they are responsible, and they show an irresponsible attitude towards CSR issues.

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