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## Corporate Social Responsibility: Critical Legal Analysis

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### **Abstract:**

*The concept of CSR was developed before four decades ago as a 'social responsibility of company', but its scope and nature have not unanimously agreed among scholars of different fields including policy makers. Initially, it was invented by business economist to balance companies profit objective against other stakeholders. Among early writers, Carroll, was credited for constructing the 'dimension' of responsibility of business for its owners, workers and the wider community at large. However, these 'dimensions' constructed by Carroll, were controversial whether the company's profit making objective can be taken as a responsibility, besides its in ability to discern traditional duties of business from voluntary act. Currently, there is a tendency to mix this concept with sustainable development, with a new, evolving, general, and complex concept, which rendered the boundary of this concept unlimited, and conceptually vague. This raises many issues about the concept as well as the nature of responsibility. This article tries to revisit the underlying idea of CSR from legal point of view to overcome conceptual intrigue.*

*After conceptual analysis, this paper concludes that it is a misconception to consider company's profit objective as responsibility. In legal terms, responsibility entails a duty imposed by law towards other which the failure to perform entails liability. Furthermore, the early conception limits the legal dimensions to company's compliance with basic duties of business-like paying taxation, duty of registration, and so on. Though, these duties are imposed by law on every business, other legal duties which termed as 'ethical responsibility' such as consumer protection, prohibition against fair competition, respect for labour rights and quite recently environmental protection etc, can also be safely categorized under legal duties. In this regard, only charitable activities can be safely categorized as moral or ethical duty.*

**Keywords:** Corporate social responsibility

### **1. Introduction**

The concept of corporate social responsibility which commonly abbreviated as CSR was developed before four decades ago mainly by business economists to balance companies profit objective against other stake holders. It has been approached by different disciplines including business economists, lawyers; and also a favorite subject of policy makers including the international communities and national states. This has created complexity on the subject to discern the nature of responsibilities as each approach has its own priority.

Among early writers, Carroll, was credited for constructing the 'dimension' of responsibility of business for its owners, workers and the wider community at large (1979). However, these 'dimensions' constructed by Carroll, were controversial whether the company's profit making objective can be taken as a responsibility, besides notorious failure to discern legal duties from moral responsibilities which assumed on voluntary basis.

Recently, there is also a tendency to assimilate CSR with sustainable development; with which more complicated and practically challenging concept. This raises many issues about the concept as well as the nature of responsibility. For this purpose, this article tries to revisit the underlying idea of CSR from legal point of view to overcome conceptual intrigue.

### **2. Conceptual Ambiguity**

What is 'corporate social responsibility'? There is no single agreed definition since CSR is a complex and constantly evolving concept. It has been approached by different disciplines, initially by business economist, soon after by others including lawyers besides policy makers. This has complicated the concept since each approach has its own concern and methodology.

Black (2006) gives general meaning for CSR, saying: 'what companies do in order to be socially responsible'. This definition even if so simple, it lacks any indication whether such concern goes beyond traditionally imposed legal obligation on business. That is to say, whether such responsibility imposed by law or assumed voluntary by corporation for moral reasons.

The European Commission defines as "...concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with stake holders on a voluntary basis..." (EU, 2001). In the first place, this definition has endeavored to avoid using traditional term 'responsibility' that added uncertainty on the concept since the nature of such responsibility was not clearly defined whether it is imposed by law or assumed voluntary by corporation. In order to avoid such intrigue, the Commission has preferred to use a general term 'concern'.

Another progress made by EU (2001) is limiting the scope of CSR to 'social and environmental concern' while omitting company's profit objective, and other obligations such as compliance with legal duties assumed by every corporation including duty to pay tax, registration, respect labour rights, honest business practices, and so on. In this view, Carroll was initially remembered for construction four dimensions of corporate social responsibility which include economic, legal, ethical and discretionary (1979). However, his approach was not clear to differentiate legal and moral obligation, in addition to labeling company's profit objective as duty contrary to underlying notion of legal 'responsibility'. What is more, in the EU (2001) definition, the nature of obligations has been reduced to moral obligation, which had been intermingled with legal obligations during earlier stage of development of the concept. However, recently, the European Union has revised its definition in 2011 which refers as: "the responsibility of enterprises for their impacts on society. However, this definition too general and has re-overshadow on the concept.

Similar definition with EU (2001) was given on the same year by the World Business Council for Sustainable Development (WBCSD) which rendered the nature of responsibility to voluntary by using the term 'commitment'. It says: 'the commitment of business to contribute to sustainable economic development, working with employees, their families and the local communities' (2001). Again, his definition has omitted the traditional usage of the term 'responsibility' and replaced by 'commitment'. The new added thing under WBCSD's definition is the association of CSR with sustainable economic development to modern dictum of relation development with environment as well as social interests as propagated by international community since 1972 (UN). In this respect EU, (2001), instead of using the term 'sustainable economic development', has opted to clarify the responsibility of a company to integrate its economic interests with social and environmental concerns on voluntary basis. Here EU (2001) has inserted the underlying notion of sustainable development in the meaning of the CSR. Indeed, business affects the environment and social interests; and there is undoubtedly a need to govern a proper balance between developments with environment. However, the insertion sustainable development in the definition of CSR, with wide, new, and complex concept, adds complication and renders its scope unlimited.

In this regard, definition adopted by WBCSD and EU (2001) are policy oriented one's and as it is based on UN policy document on the integration of development with society since the Stockholm Conference (UN, 1972). This trend has also followed by the International Standard Organization (ISO). Accordingly, ISO (2009), has come up with wider definition of CSR that directly links with sustainable development besides traditional dimension provided by Carroll. Accordingly, CSR is:

"the responsibility of an organization for the impact of its decisions and activities on social and the environment, through transparent and ethical behaviour that : contribute to sustainable development, health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and , is integrated through the organization and practiced in its relationship" (ISO, 2009).

This definition provided by ISO is too general as it deals with the responsibility of company for its act which affects the environment and the social interest in general. These obligations are based on the accepted legal standards as well as ethical norms of behavior. In order to abide by these responsibilities, the company has to behave transparently and ethically with due consideration of applicable law. Here the insertion of 'ethical' responsibility may seem not to repeat the traditional Carroll's ethical dimension as the basis of obligation is lied on legal rules and principles with due consideration of inseparability of law and morality (Bix, (ed.) 1996). On the other hand, the ISO definition is not clear enough since it seem to make all responsibilities legal and fails to deal with the traditional voluntary activities to the surrounding community, even if there is 'health and welfare of society' which might be construed as a general duty of business for the health of the community and its contribution to job creation and development in general.

The other thing which attracts critique is the labeling sustainable development in the definition. That is to say the concept of sustainable development is so general, complex, and, hence, this adds turmoil to evolving concepts, and renders confusion on both subjects. In this view, CSR is a duty of the business which might be limited to voluntary grounds to the surrounding community; whereas, sustainable development refers 'meeting the present needs without compromising the future generation interest' (Elliott, 2006). Currently, there is consensus at least at theoretical level by international community to integrate economic interests with social and environment interests (World Commission, 1987). That is to say, development shall not be limited to the fulfillment of the present economic need only, it shall also consider the long-term of environmental and social impacts. The very survival of humanity shall not be compromised since the objective of development is for the welfare of the society (Rio, Declaration, 1992, Principle 1). In this view, Martinuzzi and (2010), are also in the same opinion to associate the dimension of CSR with that of sustainable development, economic, social and environmental.

Finally, it is worthy to mention an approach that followed by legal writer, for instance Jennings, on CSR, associating it fully with 'ethics' by using the term 'business ethics'. He puts 'business ethics' is 'how a business interacts with community, the environment, and its employees (2009). Accordingly, business ethics refers fair dealing with customers and honest business practice and integrity. In this case, as it will be more elaborated under next Section, CSR is simply a moral behavior of the company towards its employees and the community at large to deal with fairly beyond the minimum duties imposed by different laws, including human rights, environmental, consumer protection, and so on.

### 3. Scope and Nature of Responsibilities

Though developed recently, CSR has exhibited different stages to reach its current level. At earliest age where the international community has never given much attention on the relation between development and the natural environment, the responsibility to balance these competing interests were shouldered on corporation. In this regard, Carroll puts order of responsibility of business prioritizing company's economic object first, which followed by legal, ethical

and discretionary. Heputs "...business encompasses the economic, legal, ethical and discretionary expectations that society has of organization at a given point of time" (Carroll, 1979). Consequently, economic responsibility includes company's profit objective; legal, denotes company's compliance with laws and policies; ethical, refers the need to balance profit objective against fairness and other moral standards; voluntary and philanthropic, refers promoting humanitarian charitable services for the community.

### 3.1. 'Economic' Dimension

How a company's profit objective can be considered as social responsibility? Here it is unusual to consider company's profit objective as responsibility. In legal terms, responsibility entails a duty imposed by law towards other which the failure to perform entails liability. This might be due to the influence of the economic philosophy of that period. In this regard, the work of Carroll and many pro-CSR writers has undoubtedly contributed to impose soft responsibility on Transnational Company to minimize their negative impact on environment and human rights since they have economic strength and Technological capacity to influence developing countries at international investment relations (Herdegen, 2013). Consequently, due to unequal economic power, they twist the authorities in the hosting countries and affect environmental interest, labour and human rights standards. On the other hand, foreign companies undeniably contribute to the economic development through increasing capital in to host developing countries in addition to creation of job employment. In this regard, in order to balance these competing interests CSR guidelines may regulate the behavior of transnational companies on voluntary basis (The OECD Guidelines for Multinational Enterprises and Social policy (2005).

Furthermore, pro-CSR legal theoreticians have also escalated the concept of CSR to the theory of "social contract". Initially the term was in Plato's Republic to describe about what is "lawful and just". AS described by Friedmann: "Therefore, when men act unjustly towards one another, and then experience both the doing and the suffering, those amongst them who are unable to compass the one escape the other, come to this opinion: that is more profitable that they should mutually agree neither to inflict injustice not to suffer it. Hence men began to establish laws and covenants with one another, and they called what the law prescribed lawful and just" (Friedmann, (ed.) 1967).

Crowther & Aras, for example, in order to give a theoretical ground for CSR, assimilate these relations into "social contract" between business and society (2010). Accordingly, they argue an 'unquestioned right 'of business to operate in society' due to existence of 'reciprocal relationships' between corporations and society. However, it is too ambitious claim to reduce the need for law to govern social relations in the society with business responsibility. Supporters of CSR, particularly Carroll and adherents of his dimension, though made due effort to justify the responsibility of corporations for wider interest, they were not totally free from the influence of liberal economic philosophy while giving priority to company's profit object, and narrowing down the pyramid when going further from basis of this responsibility to legal, ethical and philanthropic, consecutively.

For instance, the critics of CSR and who follow the idea of "free market", propagate the objective of a business is to maximize profits to its share holders, and not to be concerned about social issues. Accordingly, they prioritize profit making objective of the corporation for profit its owners. For instance, Adam Smith, the founder of 'free market' view, propagates the responsibility of business in his known work, "The Wealth of Nation" puts: It is not from benevolence of the butcher, the brewer, the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages" (1776).

In this line, Greenfield argues that a corporation has only two responsibilities; i.e. making money for its owners and obeying relevant rules (2004). Friedman puts as:

"...there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within rules of the game, which is to say, engages in open and free competition without deception or fraud" (cited at Crowther & Aras, 2010).

The critique of CSR totally denounces the notion of CSR by limiting the concern of business to its owners. Indeed, the prime objective of every business is to make profit for its owners. While making profit, it entails duty of paying taxes and engages in honest business practice for products it produces and service rendered to the community. It is the also the duty of business to act honestly without usurping the good of will of another business, besides respecting labour rights and environmental regulation. The public shares benefit of business out of collected revenue through taxation, participating in consuming its product, in addition to job creation. That is to say, it is not the prime legal duty of business to undertake charitable activities to the surrounding community as well as its employee; unless this acts deliberately intended by owners to satisfy its long-term profitability. It is a matter of voluntary act to undergo donation from moral point view going beyond the minimum requirement imposed by law. Fulfillment of this moral responsibility requires high moral standard and individual commitment. Hence, it might be with this understanding of the critique of CSR, has opposed the vague extension of responsibility to business without clarifying the legal minimum and moral initiation. Hence, this has might also rendered the implementation of CSR difficult in addition to theoretical challenges as there is competing interests between business owners and wider community in general due to scarcity of resources and moral behaviour of individuals. However, this does not mean that the concept of CSR is vain and unproductive.

### 3.2. 'Legal and Ethical' Dimensions

According to early conception CSR, the legal dimensions to company's was solely limited to compliance with basic duties of business like paying taxation, duty of registration, and so on. Though, these duties are imposed by law on every business, other legal duties which termed as 'ethical responsibility' by Carroll like consumer protection, prohibition

against fair competition, respect for labour rights and quite recently environmental protection etc, can also be safely categorized under legal duties. That is to say, every business owes the duty to deal with honestly with customers for its products or services rendered. For instance, responsibility for safety and health of worker by corporation has been imposed by international legal instruments as well domestic labour legislations since the Universal Declaration of Human Rights, (UN, 1948). The same goes true for respecting environmental and consumer protection by company.

The early misconception might be partly emanated due to construction of the said dimension earlier before consensus to integrate between developments with natural environment by international community. As corporate social responsibility constantly evolving concept, much change has been exhibited after Carroll's formulation of the scope of CSR. For instance, the need to keep a proper balance between development and natural environment begun with the Stockholm Conference of UN of the Human Environment (UN, 1972). This Conference was the one which framed the relationship of environment and society by international community. In this regard, the basic of concept of sustainable development 'meeting the present needs without compromising the future generation interest has been fully agreed in 1992(Rio Declaration, Principle 1).

Furthermore, the early attempt has been failed to differentiate the internal relationship between law and morality while demarcating boundary for legal duties and ethical duties. There is age-long debate among the two traditional legal schools on the issue of 'connection between law and morality on the one hand; and separation of law from morality' (Friedmann (ed.), 1969). Natural law school adhere the link between law and morality on one hand; and separability of law from morality by is followed by the positivist school. Indeed, there is a close connection and manifested distinction between positive law and morality. For one thing both regulate human behavior. However, in terms of sphere of influence, moral laws aimed at inner personality which would be difficult to address by positive law (Letwin, 2005). On the contrary, positive law targets external action.

For this reason, the traditional positivist theory of law, currently refined by contemporary writers most notably by Lon Fuller's who recognizes the inner relationship of law and morality of law (Bix, (ed.) 1996). Many principles of positive laws are founded on moral laws such as fairness, honesty, loyalty, good faith, reasonability, rationality, and so on. If we take family law, law of contract, employment law, public administration, for instance, they are based on fiduciary duties including duties of good faith, loyalty, trust, etc. These principles are inherently rooted in moral law and extended to positive law. We cannot achieve the objective of law without these principles in the process of administration of justice (Deworkin, 1978).

### 3.3. 'Voluntary' Dimension

Cooter, while writing fairness in view of firms and agents relationship, he begins with a question 'What forces shape the conduct of individuals and firms?' (2000). The reason as it seems due to inability of state made law to bring fairness in society. Positive law provides average or minimum standards or average standards of behaviour (Letwin, 2005). Going beyond this minimum standards are left to the discretion of each individual due to differences on moral degrees. This calls for complementary mechanisms in order to overcome the deficit of positive law. For instance, helping the needy is up to individual's conscience either to carry out or neglect and not legally enforceable. CSR is about voluntary activities on humanitarian grounds for non-business owners. This duty is not usually imposed by law except for limited grounds basing on close relationship. There is individualistic tendency in human being. The question is how to mitigate this tendency from financially capable social class to concern for humanitarian activities. For this, in order to achieve fairness, Cooter advocates the need to move towards to the interaction between legal and non-legal norms (Cooter, 2000). The contemporary positivist school writer H.L.A. Hart also supports the need for moral law to curb selfish human behavior following the line of ancient natural law philosophers. He postulates five fundamental rules or principles as a 'minimum content of natural law' should be inserted in the realm of positive for the survival of the society. These are:-

"'Human vulnerability': We are all susceptible to physical attacks'. 'Approximate equality': Even the strongest must sleep at times. 'Limited altruism': We are, in general, selfish. 'Limited resources': We need food, clothes, and shelter and they are limited. 'Limited understanding and strength of will': We cannot be relied upon to cooperate with our fellow men" (Cited at Wacks, 2006).

For our purpose, without focusing on the 'approximate equality', Hart's minimum content of natural law can be safely reduced into: human selfish behavior and limited capacity. As propounded by ancient natural law philosophers one wants to attack other physically for survival due to limited resources, or remain selfish or greedy. In this arena, resource limitations and human vulnerability can be categorized under human selfishness. Selfish behavior has to be sacrificed by understanding of our fragility and limitations. We are fragile enough due to uncertainty of life on earth. That is to say, today's strong might be tomorrow's less strong today's majority might be tomorrow's minority. Furthermore, 'approximate equality', may denote equality of interests, which might be grounded on what mostly referred as the 'golden rule', "Therefore, all things whatsoever, you should that men should do to you, do you even so to them; for this is the law and prophet" (Matthew, 7:12r). Literally, to mean, 'do to others as you would have them do to you'. That is to say, this rule urges us to put ourselves at shoe of others so as to understand the interest or need of others. If the stronger were in a disadvantageous position he might be need better treatment. Thus, human fragility calls for the need for social mechanisms which enable society to live together with due consideration to other. This might be further clear when seen this element with 'human limitations'.

Human limitations, limited capacity, limited knowledge, strength, etc brought interdependency one on the other. Business needs labour capital to engage in business. The product produced and service rendered by business needs consumers. There is division of labour in social life as one produces and the other consumes. There is different ways of participation in production of social as well as material capital, and there no one is self sufficient. We are dependent one on

another for our livelihood and existence. As owners of capital are important for generating employment for wage, production of valuable products and services for human being; labour, community as well as natural environment are equally important. This calls for long term view which can be achieved through moral lesson of the business, and not imposed from 'top to down', from policy makers to business owners.

In this regard, business ethics writer consider the existence of 'reciprocal relationships between corporations and society'. Many CSR writers (for example, Crowther & Aras,) in order to give a theoretical ground, assimilate this relation in to "social contract" between business and society (2010). They particularly, put, 'Business does not have an unquestioned right to operate in society' (Crowther & Aras, 2010). Though the reciprocity existing between business and society is indispensable, this reciprocity may not be safely approached from right and duty approach.

To sum up, only charitable activities which have been considered as philanthropic duty may be safely categorized as moral or ethical duty. Strengthening this view, Jennings has employed the term 'business ethics' associates the concept of CSR with morality (2009). Consequently, moral law supplement positive law, and the later may stem from the former. On the other hand, legal duties or responsibilities are those duties which arise from contractual or tort and the breach of them would give a legal remedy; i.e., enforced by the state.

In this view, the definition provided by EU on CSR with the aim of integrating business operations with social and environmental interests on a voluntary basis might be sounding and acceptable. It is obvious that some aspects of corporate social responsibility like the humanitarian activity are solely a matter of discretion of the company directors who may refuse or act it. Whereas, the other aspects like labour rights, consumer protection, taxation, environmental protection etc, shall not be left to the discretion of directors. In order to consider such responsibility as CSR, a corporation has to go beyond traditional legal duties. That is to mean, a company in order to increase its social reputation has to engage fair dealing with labour like providing more benefit, engage in environmental protection activities beyond minimum duties imposed by law.

#### 4. Conclusion

The concept of CSR was developed before four decades ago as a 'social responsibility of company', but its scope and nature have not unanimously agreed among scholars of different fields including policy makers. Initially, it was invented by business economist to balance companies profit objective against other stakeholders. In doing so, company's profit objective has been viewed as 'company's responsibility' besides its in ability to discern traditional duties of business from voluntary act. Again, currently, there is a tendency to mix this concept with sustainable development, with a new, evolving, general, and complex concept, which rendered the boundary of this concept unlimited, and conceptually vague. Generally, corporate social responsibility simply denotes the concern of company for its stakeholders including worker, consumer and surrounding community purely from moral initiation to make corporation more acceptable. Corporation in addition to complying with traditional duties, it has to go further to undertake humanitarian activities, fair handling of labour rights and environment. It addresses some issues like job insecurity and adequate living wages, social burden caused to due to uncontrolled exploitations of natural resources & etc by Multi National Corporations'. This in return, may increase the good will of the company, away from balancing the social and economic equilibrium that existing between well benefited and less favored social groups in sharing natural endowments, in addition to achievement of harmonious relationship in the society. It maintains natural justice and fairness through distribution resources. Hence, it entails sacrificing self interest for the sake of community going far from self-centered profit obsessed trend of corporation which causes damage to common abode besides gross violation of labour rights. However, the materialization of responsibility requires a high standard of moral behavior together with financial strength of corporation.

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