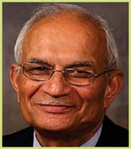
India's CSR Law- an Opportunity or Threat to find

Innovative Solutions to Critical Social Problems



* Dr. Mahesh Chandra

* Dr. Mahesh Chandra
Dept. of Information Systems and Business Analytics, Hofstra University, USA

Corporate social responsibility (CSR) could be simply defined as the "impact that businesses have on society at large and the societal expectations of them", (Handbook on CSR in India, 2013). In practicing CSR, companies integrate economic, social, and ecological concerns in their business operations and in their interactions with each of their many stakeholders. Some CSR activities have mandatory and regulatory aspects and others are done purely on a voluntary basis (Graham and Woods, 2006). The essence of CSR is that companies take responsibility for their actions and consider themselves accountable to their owners, employees, suppliers, consumers, and the community at large (called the stakeholders).

The Stakeholder Concept

Business activities are very closely intertwined with the communities and the environment in which it operates. Economic history reveals that the relationship between corporations and societies is essentially dynamic and heterogeneous and hence difficult to characterize in terms of a contract. The economic and political aspects of this relationship are so finely intertwined that it is impossible to extricate one from the other. In a ten year research program for studying corporate behavior and analyzing corporate social performance, researchers found that corporations manage relationships with stakeholder groups rather than with society as a whole. That is, in evaluating CSR performance it is important to distinguish between social issues and stakeholder issues (Clarkson, 1995).

Stakeholdersdirectly or indirectly, formally or informally affect a firm's business activities and hence its success. In fact, according to an extensive survey of CEO's by the Committee Encouraging Corporate Philanthropy (CECP) and Accenture, companies that can recognize the positive role played by one's involvement in societal issues would be sowing the seeds of innovation and growth (Coady and Khan, 2011). It is generally agreed that CSR is a complex concept, encompassing an ever-widening range of issues.

CSR as a Strategic Tool

In a highly competitive global environment, companies seek to gain competitive advantage through strategic actions, but, it is also possible, a firm could attain competitive advantage by being a good corporate citizen. Moreover, Porter and Kramer in studying the link between strategy and CSR observed that if viewed as a strategic initiative, CSR could be a powerful enhancer of competitive advantage as reflected in the performance of Whole Foods Market, Toyota, and Volvo (Porter and Kramer, 2006). These companies view CSR as much more than cost or a constraint, but rather a powerful tool of innovation and competitive advantage. CSR has emerged as an inescapable priority for business leaders in every country due to activists, media, and the government holding businesses accountable for the social consequences of their actions (Porter and Kramer, 2006).

Recognizing the advantages of CSR, Unilever, which has operations in over 100 countries, has set itself three major goals to achieve by 2020. These are: 1) to halve the environmental footprint of its products; 2) to improve the health and wellbeing of over a billion people; and 3) source 100 percent of its agricultural raw materials in a sustainable way (Jonker and Nijhof, 2011). Research studies have shown that stakeholders reward companies that undertake CSR activities by being loyal customers (Castaldo, et.al. and Ramasamy, Yeung; and Chen, 2013). Studies have also demonstrated that there is a strong relationship between corporate social performance (CSP) and corporate financial performance (CFP), especially related to corporate charitable giving (Brammer and Millington, 2008). In an exploratory study of an international company in Asia, it was found thatthere was a close alignment between CSR strategy, corporate identity and internal communications. The same research also found that these three factors werre also critical to the success of CSR programs (Chong, 2009). Studies by other researchers has also shown that CSR initiatives have resulted in positive financial performance (Scholtens, 2008 and Ducssay, 2013).

CSR as a Voluntary and Self-Regulated Concept

In developed/industrialized countries of Europe and the US, CSR initiatives by businesses are well formulated and the companies seem to be genuinely interested in CSR. Many of the companies in these countries are publicly held, global in nature with additional pressures to behave in an ethical manner. In a study on accountability, Watts and Zimmerman found that the large firms have a more political visibility and are subject to a greater external scrutiny and, hence, are willing to be active with CSR initiatives (Watts and Zimmerman, 1986). Similarly, in a recent Canadian study researchers found that larger firms are more exposed to external scrutiny by stakeholders and seek legitimacy and, hence, are willing to devote time for CSR and report about their activities (Thorne, Mahoney, and Maneti, 2014).

The more active role taken by larger firms might also be a reflection of the more enlightened consumer groups in these countries who tend to influence these companies through their activism. On the other hand, businesses in newly emerging and just developing countries are family owned enterprises, smaller in size, and operating with minimal external pressure. In addition, the consumer groups in these countries are less informed and they have simpler demands. The size of the firm and its CSR activities were studied by McWilliams and Siegel who concluded that the ideal level of CSR is definitely dependent on firms' size, its financial performance, level of diversification, and many other related factors (McWilliams and Siegel, 2001).

Moreover, it has also been noted that CSR is an increasingly pervasive phenomenon in European and North American economic and political landscape. Researchers have found that neo-institutional and stakeholder theory show the differences in the institutional environments of Europe and the U.S. affect expectations about CSR to society (Doh and Guay, 2006). These differences in the institutional framework often manifest into government policy and also that of the non-governmental organizations (NGO) activism towards issues involving CSR. Research investigating the public policy issues that guide CSR in Europe concludes that CSR a neo-liberal concept helped to downscale government regulations, but that it has in turn matured into a more progressive approach of societal co-regulation in recent years. Implying that to be effective CSR polices should have the combined inputs of self-regulation as well as regulation (Steurer, 2010).

It is difficult for firms to directly link the benefits of their CSR activities to financial rewards, studies have shown that there is some evidence suggesting a direct correlation between a company's CSR involvement and effects on the financials (Wang, 2010).Companies that have practiced CSR activities have often been rewarded by positive financial performance. For example, based on extensive literature review, researchers have found that firms with high corporate social performance (CSP) have the highest corporate financial performance (CFP) (Barnet and Salomon, 2012).

Although there is some evidence of positive financial benefits to those companies that participate in CSR activities, many firms view CSR as an additional cost with unknown benefits. These companies firmly believe in the tenet of Milton Friedman for whom the only social responsibility of business is to increase its profits. This leads to an ambivalence towards CSR initiatives by companies. This is more pronounced in developing countries of Asia. Based on a review of the submissions to a 2005/2006 Australian Government inquiry into corporate social responsibility investigating whether CSR and accountability of businesses' actions should be regulated or left to be determined by market forces, the results showed that there were equally strong arguments made for both. On one hand, as expected, the business community overwhelmingly favor an anti-regulation approach whereas, social and environmental organizations including a few individuals strongly support government intervention. Ultimately the Australian government decided not to introduce national legislation governing CSR and adopted the free market perspective (Deegan and Shelly, 2014).

Because of large family run companies, lack of understanding or foresight of the importance of CSR, and not having a sustainable economy in many of the Asian countries companies in this region are less active in participating in CSR activities(Bendell, Doyle, and Black, 2010). The issue is further compounded by the non-existence of activist groups or enlightened consumer groups who in Europe and the U.S. have influenced local firms to be more active in CSR issues. Moreover, some of the Asian countries are tradition bound and are influenced by philosophies of Confucianism and Vedic principles. These teachings provide sufficient guidelinesfor behavior in all walks of life that do not correspond to western cultural norms(Bouvain, Baumann, and Lundmark, 2013). Hence, CSR, a western concept is not often embraced fully by organizations in Asia. Past research studieshave also established that CSR is not a universal concept.

Unfortunately, because of actions by businesses in Asia, many Asian countries have been exposed to hazards and harmful environmental conditions that adversely affect people's health. These include, contamination of fresh water sources, air pollution, chemical spills, deforestation, and many others that threaten the natural environment and health of people.The response from private companies in addressing environmental issues has been weak and not been helpful in stemming the health hazards.

Under the above mentioned conditions, it appears that the best way to have Asian companies practice CSR is through regulations. Countries such as Indonesia, Malaysia, Philippines, Vietnam, and now India are trying to force companies to be good corporate citizens as their own voluntary efforts are deemed inadequate.

CSR and the Government

Why should the government get involved with CSR?Corporate Social Responsibility activities are supposed to be voluntary initiatives by businesses in demonstrating their commitment to the preservation of the environment and wellbeing of the general public. It aims to better integrate social and environmental concerns into business routines on a voluntary basis. Hence, CSR is often viewed as self-regulation devoid of government intervention. But, for CSR to meet its broad goals of responsible corporate behavior and aboveboard corporate citizenship it is believed that there has to be some form government involvement (Gond, Kang, and Moon, 2011). This involvement is critical to success of CSR programs because of the important differences in the viewpoints held by businesses and governments.

For companies in developing countries there appears to have little internal or external factors that force them to practice CSR. These include, their exposure to foreign firms, local consumers' preferences for products made by foreign companies, and the opportunity for exports for local companies (exporters fear that if they are viewed as bad corporate citizens, customers in foreign countries might not patronize their products), resulting in losses (Ofori and Hinson, 2007).

The voluntary efforts of private companies in attempting to be a good corporate citizen has not changed the impact of their actions on the environment. In fact, according to many experts, the effects of emission of carbon dioxide (CO2) are much more severe than a decade ago. Because of ozone holes caused by increased carbon emissions, Arctic wildlife and Canada's Inuit population have higher bodily levels of contaminants such as PCB and dioxin than those found in people and animals in much of the rest of the world ("Environmental overview", 2010).A report by the Intergovernmental Panel on Climate Change (IPCC) in "Climate Change Science Compendium 2009", regarding climatic change events suggests that we will be expeirencing more of ocean acidification, ice-sheet melting, sea-level rise, and so-called tipping points in climate effects much sooner than ever thought off (Parks, 2009).Similarly, in a study of concerns about climate change among American adults to explore the impact of abnormal daily temperatures on levels of concern about climate change, researchers found that the survey respondents were significantly concerned with both abnormally warm and abnormally cool temperatures (Brooks, et. al., 2014).

Because of the environmental concerns, the role of government in CSR has increased significantly over the past decade. Previously, CSR was promoted and driven mainly by private enterprises and individuals, especially in Europe and the U.S.Because of lack of progress in controlling environmental disasters, especially, among Asian countries, a few countries' in the regionare increasingly taking an active role in promoting CSR, with most countries debating whether to mandate CSR regulations for businesses in their countries. For example, Indonesia and a few countries in Southeast Asia have begun to understand that CSR can be a strategic economic mechanism when it is used as a means to attain economic growth while protecting the environment. In the case of Indonesia, the government through the Ministry of Environment has taken the lead in arguing for the initiation of a regulatory framework that would see mandatory requirement for big business (Achda, 2006). Even some businesses have come to the realization that some regulations is better than no regulation. For example, drawing on insights from recent analyses in the governance literature, researchers were able to establish the conditions under which business favors increased social and environmental regulation, concluding that corporate self-interest and increased international regulation can indeed coincide (Gjølberg, 2011). In fact, regulations may also level the playing field by forcing companies that do not practice CSR to be in par with those who voluntarily do so.

As many businesses are not yet convinced of the benefits of CSR and, hence, are reluctant to accept regulations that they feel are constraining and unnecessary. An often mentioned problem in practicing CSR is the issue of competitive disharmony. That is, in an industry with many competitors if all the players do not practice CSR, those that do might be burdened with higher cost that might not be sufficiently offset through higher customer loyalty (Baron, 2001). Under this scenario, governments are considering various ways to introduce CSR regulations that is more easily accepted by businesses and, therefore, more effective.

CSR Regulation in India

Most CSR practitioners believe that for just emerging or developing countries, tackling CSR issues through laws and regulations is challenging and problematic. These experts believe that CSR enforcement by governments requires political will to enact laws, technical expertise to understand environmental hazards, and resources to enforce regulations. Moreover, research has shown that, in developing countries companies do not comply with existing legal frameworks related to corruption, fair trade practices, respect of human rights, and other CSR-related laws (Rahbek-Pedersen and Muniche, 2006). In spite of these difficulties, a few Asian governments have enacted CSR regulations, including India.

Having had very little progress in the direction of voluntary CSR initiatives by the private sector, in 2013 government of India passed a compulsory CSR regulation to enforce businesses to act responsibly in addressing environmental issues. Clause 135 of India's Company Act of 2013 mandates that companies meeting certain criteria in terms of profit, net worth or turnover spend at least 2% of their average net profit in the previous three years on CSR activities. Specifically, the law addresses the following activities:

- Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water;
- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by| socially and economically backward groups;
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;
- Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicrafts;
- Measures for the benefit of armed forces veterans, war widows and their dependents;
- Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports;
- Contribution to the Prime Ministers' National Relief Fund or any other fund set up by the Central Government for socio economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- Contributions or funds provided to technology incubators located within academic institution which are approved by the Central Government;
- Rural development projects.

The above mentioned activities are listed in the modified Schedule VII of the Companies Act 2013.

India's CSR Laws as an Opportunity for Indian Businesses

For Indian companies, especially those that are required to meet the newcompany act concerning CSR, the law should be viewed more as an opportunity to do good as well as avoid more stringent laws that might be severely restrictive. In addition, embracing the CSR regulation might also endear them to the public as well as the country's lawmakers. A further benefit of accepting the law might be the way in which the Indian government would deal with businesses, instead of being confrontational, they might be more cooperative/collaborative in enacting new CSR laws. If fact, some researchers have found that there are a few cases in which governments have joined other stakeholders in assessing their role as drivers of CSR. These initiatives have led some governments to seek partnerships with intergovernmental organizations, thereby recognizing the importance of collaborative public policy in encouraging CSR activities (Albareda, Lozano, Tencati, Nidttun, and Perrini, 2008). Companies, of course, are not in favor of lowering their profit margins, but they probably could agree on an acceptable profit margin if CSR initiatives were arrived at through negotiations with government rather than through enacted laws and regulations.

Collaboration between companies and governments seemes to accomplish more for their local communities than through regulations. In fact, in Europe, CSR has become a priority issue on government agendas, and these governments are finding that their capacity to act on social and environmental issues is improved with better relationships with businesses and having fewer regulations (Albareda, Lozano, and Ysa, 2009).

There have been many conceptual arguments made for CSR to be non-regulated for the reasons of efficiency, level of compliance achieved, and lack of technical understanding within government bodies. In fact, some suggest that improving CSR accountability could be achieved through stakeholder engagement and co-operative arrangements between businesses' and affected entities (Ihugba, 2014).

All the above compelling reasons make it imperative that Indian companies follow the new CSR laws and use it to their advantage. This is a great opportunity for Indian companies to be a good corporate citizen as well as be viewed by the Indian government as a cooperative partner in reducing the environmental destruction.

India's CSR Laws as a threat for Indian Businesses

Private companies, if given an option would rather have fewer regulations and have the market forces determine the competitive landscape. But, because of actions and behavior of companies that have harmed consumers and the public, especially in the area of monopolistic market domination, product liability issues, bank fraud, insider trading activities, environmental damage, and many other incidences that have been deemed unethical/immoral behavior by the private sector, regulating businesses is necessary and imperative. The Indian laws on CSR is just one such reaction by the government. Moreover, more complex and controversial environmental issues, such as carbon emissions, air and water pollution, and deforestation, which require vast sums of funds to rectify and the causes of which can be attributed not to individual companies but to multiple industry groups might lead the Indian government to enact laws curtailing the activities of Indian businesses and industries that might be the main culprits of such environmental calamities.

The relationship between companies and governments is at best neutral and at worst confrontational, especially in many developing countries. Companies believe that governments make their business operations difficult by enacting laws that reduce their competitiveness and increase their costs. Hence, a threat posed by the new CSR law in India might lead to a more confrontational relationship between the private sector and the Indian government.

Therefore, Indian businesses have to be vary and mindful of other regulations that might be introduced that might be more restrictive for private companies. For reasons mentioned above, the Indian CSR act should not be viewed as a threat by Indian companies, especially the larger ones.

Conclusion

CSR is a complex philosophy that is attractive for many entities but, challenging and dificult to implement. Companies are often reluctant to voluntarily get involved in CSR activities. This situation forces many governments to impose regulations covering the most critical environmental issues. In their role as enforcers of corporate citizenship, governments have not been successful in protecting their citizens and the environment from harm caused by businesses; among the reasons for this failure are lack of political will, lack of a clear understanding of the issues, and lack of resources. Even with the challenging circumstances facing governments in enacting and enforcing CSR laws, a few Asian countries have enacted CSR laws to protect its citizens and the environment. A recent instance of government involvement in CSR is the case of India. Indian government in 2013 enacted Clause 135 of India's Company Act which mandates that companies meeting certain criteria in terms of profit, net worth, or turnover spend at least 2% of their average net profit in the previous three years on CSR activities. The central issue here is whether the Indian companies who are affected by the new law view this as an opportunity or threat?

Based on the current literature, it appears that it is in the best interest of Indian companies to embrace the law and be supportive of the government initiative. In countries where CSR laws have been enacted large companies have welcomed these laws and, hence, established a cooperative relationship with the government that has helped these companies to be good corporate citizens as well as be able to influence future regulations that otherwise might be more stringent, affecting these companies adversely.

A collaborative effort between governments and businesses that brings complementary skills to the table would in the final analysis be probably more successfulin implementing CSR laws.If the Indian companies view the new law as a threat, they will definitely be viewed as being confrontational which in all likelihood make things worse for these companies. ■