

The Theoretical Structure of Corporate Social Responsibility (CSR) as a Soft Law in the Context of Labour Law

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Abstract

Today, the whole world has been influenced by globalization. Corporate social responsibility (CSR) has now been the focus of international organisations, debates and scientific discussions with a greater or lesser degree of intensity towards labour law. Ethically, CSR today, manages many multinational companies in relation to modern labour law. This research article will discuss if CSR should be viewed as a soft law method, or as a creative strength and potential that gives hopes towards the creation of various new sources of labour law. The article will also stress on how the Open Method of Co-ordination (OMC) as a new method of governance will focus towards the need for interpreting and repositioning or positioning CSR in the labour law system at the international, national and European level. This paper will also emphasize on the International Legal Regimes which governs CSR, and in the present era, how CSR is helpful for the effective implementation towards labour law. Many companies have adopted the CSR mission statements and programs and are also sharing their efforts through the sustainability reports. This article also examines how in today's global economy, developments, outsourcing and the establishment of various networks of enterprises have had reaching impacts or effects for the enforcement of labour law. CSR activities can help in forging a stronger bond between the corporation and the employees. Generally, CSR involves "soft law" with very limited effects on the workers' rights and working conditions. This is generally based on the fact that there is no such legal commitment on behalf of the enterprise. On the other hand, in view of today's globalized economies, CSR is more appropriate than the traditional legal instruments. This Research article will basically discuss the role of CSR as a soft law method in Labour law.

Keywords: Corporate Social Responsibility, labour law, soft law method.

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INTRODUCTION

In the modern era, CSR has tremendously gained growing importance as a new and emerging form of governance, especially in the field of labour law. In the recent years, CSR is seen as in building trust and loyalty amongst employees, shareholders and customers. The first international organisations which recognized the need for a deeper analysis of CSR in all multinational companies are the International Labour Organisation (ILO) and the **Organisation of Economic Co-operation and Development (OECD)**. The former adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977, which has been amended many a times so far. As part

of the Declaration on International Investment and Multinational enterprises, the latter adopted the OECD Guidelines for Multinational Enterprises. These were the first sources which attempted to create international instruments for the purpose of conduct for Multinational Enterprises, also called MNEs, and accordingly their relations with the developing countries, where most of the production activities were carried out. The guidelines of the ILO specifically addressed MNEs, national governments, employers and workers' organisations, and accordingly they were dedicated to the field of vocational training, employment, working and living conditions, etc. Inter – alia, the OECD recommendations focused on the protection of

environment, market competition, tax regulations, etc. Various new attempts to promote the role of multinational companies in the development of society can be traced in the past, mainly in the American literature and also in the analysis of the economic history. However, the modern concept of CSR originates from the 90-ies of the 20th century when after the Conference on Environment and Development ("Earth Summit") held in 1992 in Rio de Janeiro, the United Nations (UN) invited MNEs to include provisions on the protection of workers, environment and human rights into international commercial contracts they sign. What the legal status and the legal nature of CSR have been since then, especially in terms of globalisation and the erosion of labour rights protection, could be analysed through the conceptual framework and status in international (labour) law [1]. The UN, mostly through the Global Compact launched by Kofi Annan, the World Bank, The European Union (EU), the OECD, and even the NGOs have dedicated entirely to create and promote an ethical code for and in partnership with various businesses. In order to strengthen the principles of CSR by promoting standards of international labour, the Summit Declaration from the 2007 G8 summit in Heiligendamm reaffirms the support from the precepts of the ILO. For achieving this, the Declaration focusses on the importance of cooperation between the ILO, the OECD and the Global Compact with a view to give more clarity and visibility to the standards of CSR.

THE THEORETICAL STRUCTURE

Meaning of CSR

There are different approaches to define CSR. It mainly depends on the focus of interest of each researcher. Hopkins suggests that CSR "is concerned with treating the stakeholders of the firm ethically or in a responsible manner" [2]. Here, "ethically or responsible" means treating the stakeholders in a way deemed acceptable in civilised societies. Lately, the term CSR has been updated and supplemented with new terms like "Corporate citizenship" and "Corporate sustainability". Generally, CSR's meaning is to go beyond what is actually provided in the spirit of social responsibility, and also beyond the sense of

sustainable development. According to the European Union (EU), CSR is a concept where the companies combine, as a whole, the various social and environmental concerns in their several business operations, and also in their interaction on a voluntary basis with their stakeholders. Being "socially responsible" means investing more on human capital, the environment, and also the relations with stakeholders, and also to go beyond the compliance. Some authors view the concept of CSR as "Corporate responsibility" which again stresses on the concept of "social", which again exclusively directs the interest towards labour standards.

A recent renewed EU strategy 2011-14 for Corporate Social Responsibility sees CSR as a support in achieving the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth, including a 75% employment rate target, which at the same time provides space to European businesses to take part in achieving the goals of sustainable development and a successful and highly competitive social market economy [3]. Here, the opponents stress on the fact that this approach actually attempts to hide the various business and policy circles with a view to focus only on the interests of the business sector, and thereby neglecting the social and environmental dimension of CSR. McCrudden highlights that CSR should be in the interest of all.

In all these above circumstances, it is observed that on the one hand CSR basically diverts the question of its relation to mandatory and voluntary adoption of standards; and on the other hand, emphasis is not laid on the fact how CSR can be implemented successfully. So, the answers to all these could be probably obtained through a summary analysis of "soft law" and its function.

CSR as A Soft Law

Soft law, according to the EU law, implies instruments like declarations, guidelines and opinions, that are, opposed to primary and secondary legislation, which is not required of those who are addressed, but, one must differentiate between their lack of binding effect and the potential effect they have in practice. Thus, we can say that though the

legal sources and instruments of soft law are not legally binding, their interpretative potential must never be underestimated [4].

Soft law generally poses questions on boundaries between private and public spheres, law and politics, and various questions related to authority, power, legitimacy, social practices, democracy and how does organisations work. In the EU, soft law has the progressive nature and the measures can be used by national courts of the Member States to interpret national legislation. These measures can never prevail as hard measures.

MNEs Defined

“Multinational Enterprise” or “multinational corporation” have a structure which is organized, and which enables the managerial control across the national borders. They do not trade across borders only with finished products, but also with a lot of inputs, raw materials, know —how technologies and management. Undoubtedly, MNEs play a vital role in international economics, and through direct investment, technology development, trade and finances, they affect the economic growth. Their impact on the social and economic welfare of states in which they operate is always unquestionable. MNEs also carry a number of negative roles as well, like it encourages social dumping to indirectly affect violations of labour standards, etc. National and international environment is influenced by law where MNEs operate in several ways. The law that applies to the MNE can be the law of the state it is headquartered in, or it can be the one where the principal operations, that is, law of the host country, in which value-added activities are carried out. In these relations, the dichotomy of true standards that exists, may not only affect their business performances and their overall profits, but also the considerable differences are reflected in the level of standards applied in the countries hosting their headquarters and also those countries where their subsidiaries operate, which generally have lower national legal standards inter alia with respect to the rights of the protection of workers. Also, we could imagine conflicts of laws in the field of labour without proper coordination. Therefore, the role of CSR, its legal nature and CSR

instruments can be an important framework in order to achieve the protection of workers’ rights in international labour law [5].

CSR—Its Legal Nature

CSR is a soft law method, that is, it is the creative potential that comes from ethical MNE management and which serves as the basics for creating instruments and sources of inter alia labour law with all possible direct and indirect effects on compliance with the standards of labour, labour law, and the labour relations in general. Many CSR related issues, particularly referring to labour law have been already regulated by other legal sources like international conventions, national legislation, etc. In context of compliance with international labour standards, which are partly CSR, there arises no doubt that such bodies do exist. But this again does not mean that CSR does not contain any elements which are meta-juridical (interests, morals, values, etc.) in nature. Sometimes, States comply even with legal instruments which are non-binding. So, it is not at all unrealistic to expect the companies to do the same. We must bear in mind that by accepting CSR as a soft law method, it contains a normative element that generally leads to “expectations of compliance”. For the trade unions, CSR can be a way to progress good industrial relations and also reputation of the unions. Thus, CSR has a two-fold dimension and action – inward and outward. Once being accepted in a Company; CSR becomes a vital part of both company management and its image. Many factors like the desire to recruit skilled and educated workforce, increased productivity and quality of work, improve relations among staff, strengthening a company’s brand image, etc. are the various reasons for adopting socially responsible behaviour.

CSR, by its nature, is undoubtedly a complex phenomenon which is implemented at the national level and within international organisations. But its importance cannot be denied as a soft law method which promotes labour standards, primarily because of the framework established through a specific constitutional architecture of the ILO (International Labour Organisation) [6]. At the universal level, CSR is recognized as

mechanisms through the United Nations Global Compact, and at the regional level, it is recognized by the European Union (EU) and Member States which implements CSR through the existing legal framework.

ROLE OF CSR IN ILO, UN, AND EU CSR and the United Nations

At a global level, the United Nations, together with its specialized agencies have occupied a central place for the development of CSR. In this context, the United Nations Global Compact (UNGC) is a platform for leadership for the development, implementation and disclosure of sustainable and responsible corporate practices and policies. The UNGC aims to align business strategies and operations with ten universally accepted principles in the fields of human rights, labour, environment, etc. For the field of work, these principles include inter alia four based international labour law standards, which were promoted under the ILO. They are:

- a. Freedom of association and recognition of the right to collective bargaining.
- b. Elimination of all forms of forced and compulsory labour.
- c. Effective abolition of child labour, and,
- d. Elimination of discrimination in context of labour and employment.

The UNGC always expects the companies to take measures in consistent with their commitment to the initiative, and on progress to issue a public disclosure on the progress achieved with regard to CSR. This, they can do through a **Communication on Progress (COP)** as a public disclosure to stakeholders like employees, consumers, organised labour, etc. basically on the progress of the company. A few years ago, McCrudden, in the context of the UNGC, asked a very rhetorical question if the UN itself respected the principles promoted, since the organizational leadership decided on administrative practice was mostly exhausted by raising the awareness of potential UN suppliers. However, by demonstrating its commitment to the goals it promotes, the organization itself made a step forward, because the UN Procurement Department, in 2005, drafted the UN Supplier Code of Conduct, which was adopted a year later, and which confirms the goals promoted

in the UNGC. At the global level, the UNGC and the methodology which it covers have enormous potential to promote CSR, mainly through self - regulation, which has been given a defined international framework by the UN. Thus, we can say that each method leads to the domain of labour law and the philosophy of its new resources, mainly in the process of transformation [7].

CSR and the ILO

The role of ILO in the field of CSR is indeed great at the international level. It has built a system of international labour law standards, mainly through conventions as central sources of international labour law. The new constitutional architecture of the ILO was the adoption of the **Declaration on Fundamental Principles and Rights at Work in 1998**, which is important for the CSR system. At the same time, they are also considered as the UNGC principles which all the States are obliged to comply with, in spite of the fact whether they have ratified any of the fundamental conventions or not. The various sources of labour law that emerged with the ILO framework is a social dialogue between the representatives of governments, employers and trade unions. Also, the ILO provides a series of codes of practice, declarations, guidelines, etc. that can make easier for the implementation and realisation of the international labour law standards which is not binding in nature.

On the basis of conclusions of the Ministerial Conference of the WTO (World Trade Organisation), the **ILO Declaration on Fundamental Principles and Rights at Work** was adopted which was held in Singapore in 1996. This focused on the willingness and obligation to respect internationally recognized labour standards. The content and follow-up of the Declaration created a vital foundation for a decentralized system for the execution of labour standards which reduces the responsibility of the governments and encourages in defining, promoting and implementing core labour standards. Today, this is where the potential of CSR and its instruments as sources of labour law lies.

Thus, the ILO Declaration on Fundamental Principles and Rights at Work, and the **Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of 1997** becomes the backbone of MNE's behaviour in the labour related issues as part of CSR.

CSR and the EU

Sustainable development and creation of new and better jobs was the main imperative of the EU. A possible central role of CSR was identified by the **European Commission in 2005** towards the commitment of sustainable development, capacity building and strengthening the market position of the Union. The CSR forum has played a vital role while accepting the definition of CSR and its development within the E.U. and globally. In developing best practices in CSR, the **European Work Council** played an important role. For new or existing CSR initiatives by large companies, small and medium enterprises, and their stakeholders, the European Alliance for CSR was a **"political umbrella"**. Pursuant to Directive 2003/51/EC, at the normative level, European Law requires companies to understand the company's development, performance or position related to environmental and employee matters.

On the transparency of the social and environmental information provided by companies in all sectors, the Commission in 2011 assumed the obligation to create a "new legislative proposal". Under the EU foreign policy, workers' rights as part of human rights forms the general principles of the EU law [8].

Sources of CSR Relevant to Labour Law

For promotion of CSR, the codes of conduct are the most important instruments as they occur inter alia as sources of labour law. These codes of conduct can be classified into autonomous extra-contractual (professional or self-regulated) sources of labour law. As noticed by Kocher, the legal character of the codes of conduct emerges from their integration into private law contracts on the one hand, and the legal context of competition and consumer law on the other hand [9]. Thus, CSR represents an undoubtedly creative background or rather a normative potpourri which is realized through CSR instruments. In

the words of Muckenberger, CSR may be portrayed as a part of 'hybrid labour law' or as 'a source of transnational social standards' and 'core labour standards', which is generally viewed as a 'catalyst of hybridisation'.

The situation in the developing countries is more complex due to practice to lower labour standards, which are often predicted by ILO conventions, and also the insufficiency of the national legislature where the MNEs find their economic interests. Thus, the codes of conduct have the potential to enhance the mechanisms of local labour – protective legislation. In this context, it can be said the international labour law is an unambiguous ally of CSR. Obstructing local legal culture and local interpretive capacities of competent authorities are the biggest problems in both developed and developing countries [10].

CONCLUSION

Within the MNE's code of conduct, CSR has been transformed into a classic and extra – contractual source of law. Soft law methods have significantly a greater influence on social relations which are contemporary in nature. CSR and its instruments should not replace the traditional sources of labour law, but it must be viewed as a supplementary function in a sense which is broadly interpretive in nature. With relation to CSR and the codes of conduct, the modern labour law will accept the changes sooner or later.

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