

Chapter 7

Concluding This Book

The basis of corporate responsibility has reached a new level with the transition from the question of why corporations must be socially responsible to that of how they can become socially responsible. At this level, issues of CSR are being integrated into the core policy objectives of global companies which are also moving beyond their individual business initiatives. Strong and developing economies have begun incorporating CSR principles within their socio-economic strategies and are also integrating these principles into the very fabric of their national economies.¹

Unlike the strong and developing economies, this reform has not been reflected in corporate regulation in Bangladesh, where civil society groups are unorganised, regulatory agencies are either ineffective or corrupt, consumers are not adequately informed regarding their rights and abilities and the media and NGOs do not mirror the corporate conscience. CG in this country, therefore, does not consider social responsibility issues as important in corporate self-regulation; they respond very poorly to their social responsibilities. In this situation, the laws and legal regulations related to corporate responsibilities are generally prescriptive and do not include the required strategies to compel CG to embrace CSR notions within their core strategies. Moreover, the major laws of this country do not possess suitable features to consider stakeholders, other than government agencies and stockholders, within corporate self-regulation so that they could contribute to and monitor corporate compliance and performance.

This book is about how the laws and legal regulation of this country could contribute to incorporating the core principles of CSR in corporate self-regulation. It assesses the major laws of Bangladesh associated with CG and environmental and social responsibility. It finds that these laws are prescriptive in nature and hinder corporate scope to devise and adopt appropriate strategies for CSR. These laws are

¹ Saimon Zadek, *Third Generation Corporate Citizenship: Public Policy and Business in Society* (2001b ed, 2001).

also proscriptive, limiting the capacity of legislation to support suitable strategies to contribute to the development of self-regulated corporate responsibility.

In this context, this book conceptualises ‘meta-regulation, a fusion of the reflexive and responsive modes in regulation and argues that meta-regulation could merge the patterns of private ordering and state control in contemporary corporate regulation from the perspective of a weak economy. It shows that laws with this regulatory approach could overcome the inherent limitations of prescriptive rules. Taking three Bangladeshi laws as a case study, this book has assessed the scope of incorporating a meta-regulatory approach into legal regulation. It shows that this could greatly improve the monitoring capacity of the regulatory agencies, increase corporate commitment and enhance the capacity of corporate self-regulation for developing a socially responsible corporate culture in Bangladesh.

7.1 CSR and Its Core Principles

CSR is a strong component of new business and CG models for long-term sustainability. CSR embraces four core principles: societal, environmental, economic and stakeholder. The societal principle holds that companies should contribute to building better societies, and they should therefore integrate social concerns into their core strategies and consider the full extent of their impact on communities. More particularly, this principle requires companies to uphold labour and human rights, and to engage with other relevant ethical issues.² The economic principle emphasises company efficiency in producing goods or providing services without violating social and environmental values. The environmental principle states that companies should not harm the environment in order to maximise their profits and they must take a strong role in repairing any environmental damage caused by their irresponsible use of natural resources. Finally, the stakeholder principle of CSR holds that companies should be responsible for considering the legitimate interests of their stakeholders. Strong economies have begun adopting CSR issues into their socio-economic strategies and are merging these issues into their legal regulations.³

² Archie B Carroll, ‘Corporate Social Responsibility’ (1999) 38(3) *Business & Society* 268; E Garriga and D Mele, ‘Corporate Social Responsibility theories: Mapping the Territory’ (2004) 53 (1) *Journal of Business Ethics* 51; C Valor, ‘Corporate Social Responsibility and Corporate Citizenship: towards Corporate Accountability’ (2005) 110(2) *Business and Society Review* 191; M Van Marrewijk, ‘Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion’ (2003) 44(2) *Journal of Business Ethics* 95.

³ Simon Zadek, *Corporate Responsibility and the Competitive Advantage of Nations* (2002).

7.2 Incorporation of CSR Principles in Corporate Self-Regulation Through Law

In today's post-regulatory world, it is difficult to determine the role of law in implementing social responsibilities in corporate self-regulation. Nonetheless, this book provides a detailed theoretical discussion on the implementation of CSR principles in corporate regulation through laws and contends that there is an adequate theoretical basis for such implementation.

The discussion in Chap. 3 centred on legitimacy theory, stakeholder theory and NG. It concluded that the demand for incorporating CSR principles in corporate regulation is supported by adequate normative arguments associated with justice, fairness and communitarianism. These are endorsed by the doctrinal approaches that reject the exclusivity of cost-benefit analysis and include distributive aspects in the efficiency models focused on maximising profits. Standing on these philosophical arguments, this book considers that state-promulgated laws have the scope to assist corporate regulation to adopt ethical guidelines, to incorporate stakeholder concerns and to develop internal strategies within companies to internalise the costs that currently externalised to the environment and society more efficiently.⁴ On the same basis, it asserts that the shift in the larger political economy is moving towards fundamental changes in CG by relying on the changing role of companies and their license to operate in societies. The profit-centred focus of CG has gradually been reduced and has allowed the development for an alternative way that focuses on the pluralisation of actors, ethics and accountability in CG and regulation.

Chapter 4 of this book discussed the legal strategies required to incorporate CSR principles within corporate self-regulation. It explained that the strategies for incorporating CSR principles into corporate self-regulation generally depend on the efficacy of the nexus between CSR practices and corporate approaches when considering the social, environmental and ethical demands on companies. The implementation of CSR principles in corporate self-regulation creates two inter-related approaches; the holistic approach 'makes sense only within the context of more substantive discussions of regulatory and social policy that tells us for what corporations must take as responsibility.'⁵ The materialistic approach seeks various mechanisms to absorb these principles effectively within the internal governance structures and management practices of companies. Companies tend to follow this materialistic approach rather than the holistic approach of CSR.

In this situation, how the principles of CSR could be incorporated at the core of corporate self-regulation through laws is a crucial question that sparks many ideas

⁴ Amir Gill, 'Corporate Governance as Social Responsibility: A Research Agenda' (2008) 26 *Berkeley Journal of International Law* 452, 461; see Doreen McBarnet, Aurora Voiculescu and Tom Campbell, *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007); David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (2005).

⁵ *Ibid* 48.

as well as many controversies. Scholars are divided over the core issues of such incorporation; while some claim that ‘CSR lacks a dominant paradigm’⁶ others argue that the dominant approach of CSR is instrumental and focuses on the economic function of companies.⁷ Again, on the one hand, civil societies and NGOs demand greater social responsibility on the part of companies, while on the other corporate societies want to conduct their operations without interference. These contradictory arguments and demands are the source of the ongoing debate between pro-regulation and pro-business advocates. These groups are supported by arguments taken from the realism and neo-liberal schools of thought.

This book has discussed these normative arguments and showed that the nexus between corporate regulation and CSR principles are no longer confined within the debate between pro-business and pro-regulation advocates over the value of CSR practice and their political effects. Rather, their nexus in the face of changes in regulatory strategies, CG, and social policies have minimised this controversy over both the potentials and limitations of corporate accountability mechanisms. These changes also make impacts on the scholarly works and real world practices. Scholars and practitioners are more engaged in looking beyond their traditional perceptions to explore how laws could synbooke their different strategies to develop this nexus and could affect existing practices in corporate regulation and social advocacy.

As discussed in Chap. 4, this book sees a place for the concept of the ‘third perspective’—a normative basis for regulatory strategies for incorporating CSR principles in corporate self-regulation. This perspective focuses on the pluralisation of actors, ethics and accountability in corporate regulations and implies that CG is no longer solely dependent on shareholders, rather, on the ‘relationships among the many players involved (the stakeholders) and the goals for which the corporation is governed.’⁸ On this theoretical basis, the third perspective merges the arguments of the pro-regulation and pro-business advocates for assisting strategies to incorporate CSR principles in companies. It proposes consensus in creating regulation, joint efforts in policy-making, an authoritative mode in regulation and scope for self-regulation while forming any regulation.

This book contends that this perspective is a suitable fit for developing regulatory strategies to incorporate CSR principles into corporate self-regulation. This perspective is a combination of all the options for developing a regulatory

⁶ Andy Lockett, Jeremy Moon and Wayne Visser, ‘Corporate Social Responsibility in Management Research: Focus, Nature, Alience and Sources of influence’ (2006) 43(1) *Journal of Management Studies* 115; Abigail McWilliams, Donald S Siegel and Patrick M Wright, ‘Corporate Social Responsibility: Strategic Implications’ (2006) 43(1) *Journal of Management Studies* 1.

⁷ Subhabarata Boby Banerjee, *Corporate Social Responsibility: The Good, the Bad and the Ugly* (2007); John Roberts, ‘The Manufacture of Corporate Social Responsibility: Constructing Corporate Sensibility’ (2003) 10 *Organization* 249.

⁸ Corporate Governance Systems and Processes: The Key for Uncompromising Growth and Development http://ivybook.typepad.com/term_paper_topics/2009/07/corporate-governance-systems-and-processes.html at 22 November 2010.

framework, though the proportion of each of these options in such a framework might vary. It allows adequate scope to companies to cater for their own plans to maximise their profits within the boundaries of the law and minimal ethical constraints, while simultaneously using obligatory regulation to ensure companies' liability to society. The main characteristic of this perspective is its flexibility to fix the proportion of the different policy instruments to suit the corporate culture of a company in any individual context. It lays the basis of a strategic fusion of different modes and actors of regulation in laws; laws with this fusion could ensure that corporate self-regulation responds to public policy goals and could also provide scope to companies to design their own strategies for balancing their interests and the aim of such laws. Taking this characteristic as vital in laws for implementing CSR principles in corporate self-regulation, this book conceptualises 'meta-regulation' to assist laws related to the development of corporate social responsibilities.

7.3 A Meta-Regulation Approach of Law to Instil CSR Principles in Corporate Self-Regulation

A meta-regulation approach is one where different forms of regulations regulate one another. This regulatory approach, when incorporated into laws, attempts to link social values to economic incentives and disincentives, and it indirectly influences CG to incorporate CSR principles through self-regulation. With these characteristics, as was discussed in Chap. 5, this approach to develop self-regulated responsibility in companies determines regulatory strategies in laws in three ways:

1. A meta-regulation approach provides scope to devise incentives that encourage corporate management to adopt internal regulations and systematic compliance processes that address social, environmental and ethical responsibilities.
2. The sanctions embedded in laws with a meta-regulation approach ensure that CSR principles have been included in the compliance systems of companies in a manner that befits the company in question.
3. A meta-regulation approach allows laws to provide scope to different stakeholders to contribute to corporate self-regulation. With provisions for the pluralisation of power in corporate regulations, a meta-regulatory approach creates the possibility of meta-evaluation of corporate self-regulation in the development of a socially responsible corporate culture.

To obtain the maximum benefit from the meta-regulatory approach to enable CSR implementation in companies, regulators and policy framers must select relevant incentives, disincentives, sanctions, coercions or other issues that are related to CSR principles. Incentives (the same incentive could be treated as a disincentive depending on its acceptance or avoidance by the specific company), coercion, or certain privileges are the tools through which the concept of meta-regulation is realised in companies. For instance, developing an independent and

efficient media that reflects the social, ethical, and environmental performance of companies would be considered as a tool for meta-regulation. Arrangement for better education and raising awareness of consumer rights would be another instance of such tools (the last section of Chap. 5 described other tools for meta-regulation). It is worth mentioning that companies have diverse motivations and it cannot be assumed that deterrence is the main source available to regulators and policy-makers. The effects of negative publicity, informal sanctions and shaming, incentives provided by various third parties, the significance to private companies of maintaining legitimacy and the necessity to maintain cooperation and trust are also capable of influencing corporate self-regulation. Nonetheless, the types and efficiencies of the tools that generate meta-regulation are contentious; they vary with differences in circumstances and objectives. For instance, in a weak economy where civil groups are less organised and the media is weak, legal sanctions, coercion or actions against corruptions could be suitable tools for meta-regulation. For the development of meta-regulation in strong economies, providing incentives to media groups would be a more efficient tool than coercion or sanctions.

The meta-regulation approach of law described in this book provides insights concerning how to best to approach the task of incorporating the principles of CSR in the companies of Bangladesh. This book contends that returning to the policies of the past may not be the best option for regulatory reconfiguration. Although there is a role for the traditional mode of regulation in corporate regulation, this alone does not meet many contemporary policy needs. The increased dynamism, diversity, and interdependence of contemporary society has made the older policy strategies and patterns of governance less effective. This calls for a convergence of other strategies for corporate regulation. However, these regulatory strategies are contextual; they make different contributions depending on the nature and context of the corporate policy issue to be addressed. At this point, the best way would be to accomplish a substantive compliance with regulatory goals by any viable means, using the combination of relevant regulatory, economic and quasi-regulatory tools. This book has assessed the scope of incorporating this approach in three major laws of Bangladesh.

7.4 A Meta-Regulation Approach in the Major Laws of Bangladesh

Assessing the scope for incorporating the meta-regulation approach in the major corporate laws and regulations related to the development of self-regulated CSR in Bangladesh has been another major task of this book. This assessment, presented in Chap. 6 of this book, finds that the incorporation of a meta-regulatory approach in the major laws of this country is possible.

This book suggests that the principles of CSR need to be considered as central in all laws related to corporate self-regulation. This would enhance the scope for

regulators and stakeholders to assess the presence CSR principles within CG frameworks. From a broader perspective, laws and legal regulations need to have suitable strategies to ensure that business strategies provide clear signs of a move towards the acceptance of their social responsibilities are some other meta-regulating tools that do not base on the coercive mode of regulation. To this end, the laws with a meta-regulatory approach should have three ingredients:

1. A substantive notion of CSR so that they could insist that CG maintains a strong commitment to CSR.
2. Meta-regulating tools that could indirectly require CG to direct management to consider the principles of CSR as central to corporate self-regulation.
3. Provisions creating scope for stakeholders to be systematically involved in corporate self-regulation where this relates to CSR.

In particular, this book suggests that the *Companies Act 1994* (Bangladesh) could incorporate the meta-regulation approach to raise CSR; it could have provisions relating the obligations of corporate directors to accept CSR principles at the policy level. There are many indirect ways to increase corporate directors and senior managers' liabilities for this obligation. Amongst these, redefining the 'due diligence' clause, providing clear responsibilities and liabilities for providing consumer education and raising awareness as well as including coercion and economic incentive-based measures in different laws related to manufacturing and marketing are noteworthy. Another meta-regulating tool for this Act would be the incorporation of a provision relating to the rights and liabilities of bounty hunters as discussed in Chap. 5 of this book. This would insist that corporate management ensures the ethical standards of all their internal strategies. Moreover, this would also allow the public organisations to better accommodate their lack of expertise in dealing with corporate performance and responsibility, as well as contribute to a reduction in the rate of corruption in public officials in general.

Extending the substantive notion of 'decent work' in labour and industrial laws is an important option to develop corporate responsibilities in labour-related issues. The *Bangladesh Labour Law 2006* (Bangladesh) could incorporate this notion. It could sanction the provisions for stakeholder involvement in the internal strategies of companies so that these reflect their needs and circumstances. This law could redefine its provisions about labour unionism, workplace discrimination, the monitoring of corporate performance and the coercive measures described in it. It could have provisions that could relate the internal regulations of companies for labour welfare and safety with the provisions for the mitigation of penalties for companies. This would enable judges and administrators to consider the corporate performance track record as a criterion when determining the limits of a punishment. This would encourage companies to maintain effective internal strategies and systematic management for the welfare of their workers. Chapter 7 of this book has discussed this meta-regulation approach in detail.

The implementation strategies mentioned in the *Environmental Conservation Act 1995* (Bangladesh) could be based on a system combining public agencies, business societies and civil groups at the macro level. At the micro level,

implementation strategies could provide incentives to stakeholders and media groups to monitor corporate performance in environmental issues. Incentives for the development of public interest litigation, increasing legal aid to the victims of industrial pollution and so forth are other important issues needing to be incorporated in any environmental conservation regulatory framework. Provisions on the protection of whistleblowers could be another important meta-regulating tool of this Act. Such protection would encourage CG to insist corporate management remains vigilant in their self-regulatory strategies for waste, effluent and environmental management. Given the current shortage of efficient manpower, information sources and technologies in the public agencies established to protect the environment from industrial pollution, this provision would be an effective source of information from a wide range of corporate constituents and public organisations. This has been achieved in the related laws of many other strong and developing economies. Chapter 6 has assessed this Act and finds scope for incorporating these types of meta-regulating tools within it.

This book is the first study of its nature to explore how corporate laws and legal strategies could contribute to developing corporate social responsibility without interfering directly in companies' internal regulation. It shows that the legal strategies for this development must connect two contradictory disciplines: while retaining the voluntary nature of CSR, they must instil CSR principles in corporate self-regulation by means other than the command-and-control modes. In line with these two contradictory points, this book has conceptualised a meta-regulation approach of law that can channel one regulation so that it is regulated by another to reach the desired objective. Taking three Bangladesh laws as a case study, this book has assessed the scope of incorporating this approach in laws related to CSR; it has explained that a meta-regulatory approach within these laws could contribute significantly to the incorporation of the core principles of CSR in corporate self-regulation in weak economies that lack strong non-legal drivers to require companies to become more committed to the society in which they operate.