

## On the Perspectives of the Implementation of ‘Corporate Social Responsibility’

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**Abstract:** In the face of changes in corporate regulation scholarship, the percepts of corporate governance and legal policies have minimized the controversies over the potentials and limitations of corporate accountability mechanisms. In the contemporary scholarly works on the implementation of corporate social responsibility (CSR), there are evidences that support CSR principles to be implemented through legal regulation. Scholars and current practices, however, emphasize that this implementation should not be based on any single strategy. From this perspective, this article argues that the regulatory strategies for this implementation should be based on a fusion of legal sanction, market incentives and the demand of private ordering.

**Keywords:** CSR, regulation, corporate self-regulation, weak economies

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### 1. Introduction

The basis of corporate responsibility has reached a new level of transition from why corporations must be socially responsible to how they can become socially responsible. At this level, issues of corporate social responsibility (CSR) are being integrated into the core policy objectives of global enterprises and are also moving beyond their individual business initiatives. Strong economies have started taking CSR issues into their socio-economic strategies and are driving these issues into the very fabric of national economies (Zadek 2001). Unlike the strong economies, this reformation has not been reflected in the corporate regulation of weak economies, where the civil society groups are unorganised, regulatory agencies are either ineffective or corrupt, and media and NGOs do not mirror the corporate conscience. In these economies, the laws and legal regulations related with corporate responsibilities are mostly prescriptive and do not include the required strategies to compel corporate governance to embrace CSR notions within their core strategies. Their regulatory policies do not possess suitable features to take account of stakeholders other than the governmental agencies and stockholders with the corporate self-regulation so that they could contribute and monitor corporate compliance and performance.

It is important to determine the core basis of the implementation of CSR principles in corporate regulations. Scholars are divided at the core issues of CSR implementation: while some scholars claim that ‘CSR lacks a dominant paradigm’ (Lockett, Moon and Visser 2006; McWilliams, Siegel and Wright 2006) others argue that the dominant approach of CSR is instrumental and focus on the economic function of companies (Banerjee 2007; Roberts 2003). Again, on the one hand, civil societies and NGO groups demand to ensure greater social responsibilities from companies and on the other hand companies want to conduct their operations without interference. A tension has emerged between what has grown to be the two wings of CSR:

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the voluntary, pro-self regulation wing and the mandatory, pro-regulation wing. These make it extremely difficult to characterize CSR using a single term; as it now refers to many competing features and notions. As Shamir defines it, CSR is '[t]he social universe where ongoing negotiations over the very meaning and scope of the term social responsibility take place' (Shamir 2005:38).

Given this background, this article describes the contemporary scholarly works on the basis for implementing CSR principles in weak economies in general. First it provides a short note on CSR and its principles. Second, it discusses some of the scholarly works on the implementation of these principles. This discussion highlights the contribution of these works in the devolution in the regulation landscape related with such implementation. Finally it concludes that there is a consensus amongst the scholars that the principles of CSR could be implemented through legal regulation and the mode of this regulation should be based on the fusion of different modes of regulatory strategies. The hallmark of the laws or regulations that holds such fusion is that it relates state sanction, market incentives and private ordering at the same time and does not rely only on the prescriptions of laws or on the corporate conscience.

### **2. Corporate social responsibility**

CSR is a fluid concept (Hopkins 2004:1; Marrewijk 2003:105). Its interchangeable and overlapping character is dominant in its definition. To some scholars, this concept resembles the source of competitive advantage; to others, it is 'an important response to the increasing demands of key stakeholders such as employees, investors, consumers and environmentalists' (Bagi, Marina and Narani 2004; Pinkston and Carroll 1996). Again, the precepts of CSR change with each generation, and its criteria may change according to the society in question (Kakabadse, Rozuel, Lee-Davis 2005). For instance, its meaning in the Continental European welfare society is different than its meaning in the USA or in developing or transition society (Dougherty 2001 in Kakabadse, Rozuel, Lee-Davis 2005). While in the USA, business enterprises consider the philanthropy as a dominant factor of CSR in the Northern countries' business enterprises bear their social responsibilities by paying taxes (Kakabadse, Rozuel, Lee-Davis 2005:280). Given this, the concept can be described using a number of terms: corporate citizenship, the ethical corporation, corporate governance, corporate sustainability, socially responsible investment, corporate accountability and so on, and there is no overall agreement on its definition (Services 2006). The underlying notions of these terms are inwardly consistent and converge on some common qualities and similar elements. In a broader sense, CSR is about the impact of business on a society or, in other words, the role of business enterprises in the development of the society. In its narrower sense, it is a complex and multi-dimensional organizational phenomenon that could be defined as the extent to which and the way in which an organization is consciously responsible for its actions and non-actions and the impact of this on its stakeholders.

Though there is no agreed and universally recognised definition of CSR, there is indeed the proliferation of numerous definitions of CSR. Carroll gave a long account of evolution of the definition of CSR beginning from the 1950s to the 1990s with a specific feature of each decade in terms of its development (Carroll 1999:269). In the 1980s, as he mentioned, some alternative theoretical issues were added to the concept itself including corporate social performance, stakeholder theory, and business ethics theory (Carroll 1999:280). In the definitional development occurred in 1990s these alternative themes took centre stage in the manifestation of CSR (Carroll 1999:288) and thereupon all the subsequent definitions of CSR were

dominated by stakeholder and societal approach with the recognition of social, economic, and environmental issues as the basic components of responsibility. The best illustration of this is available in the definitions and views developed in the late 1990s and thereafter by the different intergovernmental, governmental and development organisations and some post modern academics (Dahlsrud 2008).

The World Business Council for Sustainable Development defined CSR as ‘the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large’ (Watts and Holme 1999). According to this definition, business societies have responsibilities to contribute to the development of their employees, their families, the local community, and society at large to improve their quality of life and thereby try to ensure sustainable economic development (Watts and Holme). The phrase ‘continuing commitment’ used in this definition indicates that CSR is not a temporary or momentary issue that a company considers under a certain situation. Rather, it is a permanent issue that should be placed strategically in the policies and programs of business enterprises. Business for Social Responsibility (BSR) defines CSR in a more holistic way. This organization refers to CSR as a tool for ‘achieving commercial success in ways that honor ethical values and respect people, communities, and the natural environment’ (White 2006:6). Thus, BSR relates CSR with the idea of recognizing and responding to a broader spectrum of stakeholder interests. International Business Leaders Forum extends this idea and accepts it as a responsible business practice that could benefit business and society by maximizing the positive impact business has on society and minimizing the negative.

In a similar fashion, the Commission of the European Communities defines CSR as ‘a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis’ (EC 2001). In another definition by the commission, it is said that ‘corporate social responsibility is essentially a concept whereby a company decides voluntarily to contribute to a better society and a cleaner environment’ (Dahlsrud 2008).

Given these definitions, CSR appears to be a managing element that starts at the company level by its performance in a socially responsible manner, where the trade-offs between the needs and the requirements of different stakeholders are in balance and acceptable to all. This concept is inwardly consistent and converges on some common characters and similar elements. More precisely, if CSR as defined above is looked at from a practical and operational point of view, the whole thing converges on two points. CSR requires business enterprises (a) to consider the social, environmental, and economic impacts of their operations and (b) to be responsive to the needs and expectations of their stakeholders (Tung 2006). These two points are also embedded in the meaning of the three words (i.e., ‘corporate’, ‘social’, and ‘responsibility’) of the phrase ‘corporate social responsibility’. The word ‘corporate’ generally denotes business operations, ‘social’ covers all the stakeholders of business operations, and the word ‘responsibility’ generally refers to the relationship between business corporations and the societies within which they act together. It also encompasses the responsibilities that are innate on both sides of this relationship. Accordingly, CSR is an integral element of business strategy, the way the business enterprise goes about delivering its products or services to the market. It is also a way of maintaining the legitimacy of its actions in the larger society by bringing stakeholder concerns to the foreground.

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Considering the definitional construct of CSR and the major sources of its practices, it is apparent that CSR practices could be grouped into four major approaches, these are, societal approach, environmental approach, economic approach and stakeholder approach of CSR practices. Though each of these approaches has different perspective in terms of definition and boundary of responsibility (Marrewijk 2003), they have their underlying principles. Briefly, the principle of the societal approach of CSR is that business enterprises should contribute to building better societies and therefore they should relate social concerns into their core strategies and they should consider the full scope of their impact on societies; more particularly, this principle requires business enterprises to uphold labor rights and practices, human rights, and other ethical issues (Carroll 1999; Garriga and Mele 2004; Valor 2005). The economic principle emphasizes business enterprises' efficiencies in producing social goods without tilting social and environmental values (Elkington 1998; Rogers and Ryan 2001; Juholin 2004). The environmental principle, in short, is that the business enterprises should not harm the environment for maximizing their profits and they should have strong roles in repairing the environmental damage caused by their irresponsible use of natural resources (McAdam and Leonard 2003; Matten and Moon 2007). Finally, the principle of stakeholder approach of CSR practices hold business enterprises responsible in considering the legitimate interest of their stakeholders (Jamali 2008). These principles are the drivers of the sources of different CSR practices and hence important factors for initiating any strategies for developing CSR practices. These principles are used broadly within different segments of government, business and academics. For this thesis, these principles are considered as the corner stone for developing socially responsible corporate culture at the business enterprise level.

Defining a paradigm is problematic; defining corporate social responsibility (CSR) is complex and contingent on situational factors. In its second generation, though CSR should have a moderately universal definition, the trend of its definitional construction is not yet satisfactory. At this gap, nonetheless, it has almost narrowed down its principles which are acknowledged by the standardization regime, global business societies and nation states. The broader understanding of CSR is that the business enterprises should be committed to 'contribute to sustainable economic development - working with employees, their families, the local community and society at large to improve the quality of life, in way that [is] also good for business (Ward 2004:3).

### **3. Implementation of CSR principles**

The CSR literature and programs suggest different options for incorporating its principles in corporate self-regulation. Scholarly works on this incorporation is diverged and cannot be bundled according to any prescribed criterion. The following discussion is on some major works chosen randomly; the particular aim of which is to assess the views of the leading scholars from a broader range of perspective for incorporating CSR principles in corporate regulation through law.

World Business Council for Sustainable Development (WBCSD), Commission on the European Communities, Australian Parliamentary Joint Committee on Corporations and Financial Services indicated that CSR is not a temporary or momentary issue that a company considers under certain situations; rather it is a permanent issue that should be strategically included in policies and programs related with companies (EC 2001; Dahlsrud 2008). They agreed that CSR has contributory aspects that can be considered as a broader policy agenda for the business management pattern. At this point, the recent publication of the

Australian Parliamentary Joint Committee on Corporations and Financial Services pointed three characteristics of CSR which echoed the necessity of CSR as a broad based policy option for the corporate management. This Committee points out that CSR is a complete process that should (a) consider, manage and balance the economic, social and environmental impacts of company activities; (b) assess and manage risks, pursue opportunities and create corporate value beyond the traditional core business of the companies; and (c) take an 'enlightened self-interest' approach to consider the legitimate interests of the stakeholders of any companies (APJCCFS 2006); Hopkins 2004; Blowfield and Frynas 2005: 501; Moon and Vogel 2008).

This Committee, however, doubts the position of CSR in the core notion of corporate governance (APJCCFS 2006). It has also doubted whether CSR and Corporate Governance as paradigms of corporate management patterns go the same way as company's management or they have their respective ways. At this point, there exist some conflicting views. This Committee viewed that the notion of corporate governance is broader than the notion of CSR into the company's management practices. It accounts corporate governance as the main source of the interaction amongst the company's board of directors, management and shareholders (APJCCFS) whereas transparency in corporate decision making and accountability to shareholders are the core points of CSR (APJCCFS). Agreeing with this view, Grant summarized the role of corporate governance as, '[c]orporate governance is a broad theory concerned with the alignment of management and shareholder interests' (Grant 2003; Ahmed and Eusuf 2005:16). A framework for corporate governance mentioned in the OECD Principles of Corporate Governance also showed CSR as a part of corporate governance (OECD 2009). Thus, there is a stand by academics and organizations that the notion of CSR is a segment of corporate governance and thereby they put less emphasis on the development of CSR into corporate self-regulation.

However, a good number of scholars contested the above mentioned relationship between CSR and Corporate Governance. For instance, Mark Walsh and John Lowry viewed that corporate governance is an increasingly important aspect of CSR and one of its roles is to provide more solid foundations on which broader CSR principles and business ethics can be further enhanced (Walsh and Lowry 2005:38). Thus they assessed the notion of 'corporate governance' in its narrower sense to draw an important distinction with the notion of CSR. To them, corporate governance is a mere administrative/procedural concern and is mostly related with the shareholders' values and interests (Walsh and Lowry). Corporate governance encourages management to develop the business in the best interest of the shareholders whereas, despite legal underpinnings, CSR is more connected with environmental, labour and consumer obligations than corporate governance (Walsh and Lowry). Chris Marsden supported the views of Walsh and Lowry and noted that CSR is not an additional option for corporate regulation pattern rather it deals with the core issues of any business entrepreneurship. In this regard he mentions:

*Corporate social responsibility is about the core behaviour of companies and the responsibility for their total impact on their societies in which they operate. CSR is not an optional add-on nor is it an act of philanthropy. A socially responsible corporation is one that runs a profitable business that takes account of all the positive and negative environmental, social and economic effect it has on society (Marsden 2005 in Richter 2005; Hopkins 2004).*

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Although there is no agreed definition of CSR at a global level, the concept of CSR has been settled within a broader perspective in corporate management and recognized as a long term business strategy that balances corporate rights with obligations towards its stakeholders. It has been repeatedly mentioned by scholars that this concept can add value to society and therefore should not be given less weight in the corporate governance pattern. However, the volume of studies that clearly advocates for the implementation of CSR in corporate regulation through law is low. For example, Carroll's definition of CSR includes four responsibilities of which 'legal' responsibility is marked as a future responsibility for the companies (Carroll 1991:40-1).<sup>1</sup> Moreover, it has not been described thoroughly how this legal responsibility could be disbursed by the companies.

UNIDO— an active international organization for the promotion of industrialization in the world — viewed that there could be logical enhancements of CSR dimension while this practice is at its third generation. This organization viewed that with the increasing concern of sustainable and ethical trade practice and the positive relation between CSR and business case, in near future CSR would be considered as an obligation for the commercial entities.

Wilfried Lutkenhorst agreed with the views of UNIDO and puts emphasis on the necessity of public actions for scaling up CSR initiatives even at the level of individual companies. He notes that the economic dimension of CSR has been least explored though this dimension is the way in which large buyers interact with their suppliers. He argues that the companies of least developing countries that are involved with the export oriented manufacturing for global markets need to be equipped with the tools and expertise to monitor and report on their own CSR performance and to continuously improve that performance (Lutkenhorst 2004:18). Hence, he calls for more emphasis on:

*Deliberate public action seeking to reshape markets and strengthen drivers for the adoption of CSR practices. This will have to work on both the supply and the demand side: by providing financial incentives to companies that take the lead in moving CSR forward (e.g. rewarding the introduction of environmentally friendly processes and products) and by stimulating consumer preferences in support of 'responsible' products. Finally, good public sector governance itself is essential: It is primarily SMEs that can benefit from transparent rules and the absence of corruption (Lutkenhorst).*

Acknowledging the debate on the future importance of CSR strategies, he argues that CSR oriented strategies are a source of competitive advantage and it provides strengths to companies to face the challenge of rising production standard to the exporting companies of LDCs. According to him:

*...with more and more evidence that being a responsible producer has lasting economic benefits in many highly competitive markets, CSR practice has powerful incentives and may become increasingly rooted in enterprise strategies (Lutkenhorst).*

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<sup>1</sup> According to Carroll, CSR has four responsibilities mainly; those are- economic (must do), legal (have to), ethical (should do) and discretionary (might do). For details, see (Carroll 1991), 40, 41

He admits the necessity of public policy for the development of CSR into the self-regulation pattern of companies specially which are seeking international market access as suppliers within the global supply chains of big international buyers. Simultaneously, he negates the chance of the development of companies' competitiveness in the global supply chain if CSR is a mere inclusion in corporate regulation and does not add value to the business case. Therefore, his suggested policies are mostly in strategic form and focused on the development of CSR as business tools.

Ira Jackson and Jane Nelson have elaborated on the scope of CSR and referred to three ways flowing which the companies can embed the broader vision of CSR into their core business strategies (Jackson and Nelson 2004). These business strategies and activities are centered to the development of companies' product quality and new value chain relationships aligned with the social and environmental need from the corporate bodies. For example, they suggested eco-innovation and the development of environment friendly technologies that meet consumer needs with less of an environmental foot print.

Jane Nelson emphasized the necessity of a complete framework for the insertion of CSR into the development of corporate regulation initiatives and suggested new types of partnership between large and small companies, and between the private sector, governments, NGOs, business associations and research institutions. Here, he does not mention the type of mechanism that could build these stakeholders partnership. He mentions six issues that motivate companies to adopt CSR practices. In his summary of the strongest motivators for companies to engage in CSR issues, 'responding to market or regulatory requirements' is one of the most important motivators. According to his summary of the results of several surveys in Europe at the national and regional level as well as survey by the UN Global Compact, other strong motivators for companies to adopt CSR practices are (Jackson and Nelson 2004:99):

#### **Key motivations for companies to adopt CSR practices**

Motivators	Context
Personal values and ethics of firm leaders	-Often owner – operators
Market or regulatory requirements	-Global supply chain standards especially in buyer-driven value chains and on workplace and environmental practices. -Government regulations, specially relating to environmental performance and safety
Improved stakeholder relations and reputation	-Employees, leading to greater motivation and morale customers leading to increased sales, more stable relationships. -Regulators, links to license to operate and less regulatory oversight
Cost savings	-Eco-efficiency measures, especially energy and water savings and waste reduction. -Reduced employee turnover, downtime and absenteeism
Improving productivity	-More motivated employees -Links to quality initiatives
Innovation and learning	-Opportunities to catalyse innovation and to increase or diversify organizational learning

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Considering the motivators and their effects on the overall context of companies, he ultimately showed the scope and impact of regulatory initiatives for adopting CSR into the corporate regulation. He mentioned that the role of any government in supporting companies should be-

*..Ensuring that framework conditions, consultation structures and delivery mechanisms for finance and business development service enable rather than exclude small enterprises, helping informal enterprises move into the formal economy and high-potential entrepreneurs upgrade into broader value chains (Jackson and Nelson 2004:105).*

In *Building Linkages for Competitive and Responsible Entrepreneurship*, he suggests government actions for creating enabling environment for private sector development that diminishes the risk, lowers the cost and barriers and raises the rewards and opportunities for competitive and responsive private enterprises. In line with his views, the World Development Report 2005 mentioned:

*Government policies and behaviour play a key role in shaping the investment climate. While government have limited influence on factors such as geography, they have more decisive influence on the security of property rights, approaches to regulations and taxation(both at and within the boarder), the provision of infrastructure, the functioning of finance and labour markets, and broader governance features such as corruption (WB 2004).*

This report warns about the contrast between formal regulations (or laws) and what actually happens in practice. It identifies several layers of challenges that impede implementation of ethical, social and environmental practices by the companies of developing countries (Nelson 2007:95). The first challenge is that the companies and their stakeholders have to increase research, collect credible data and information on the 'business case'. The second challenge is to increase the knowledge and good practice examples on how to most effectively and efficiently implement the ethical, social and environmental performance criteria and innovations in practice. The third challenge relates to the companies capability to ensure finance, skill capacity and support service to move forward on integrating CSR practices into their operations. Finally, he mentions that corporate self-regulation and CSR nexus have to get market incentives and regulatory sanction to tackle the problems that arise with the emergence of free riders.

To meet these challenges, this report focuses on four areas where the government has a vigilant role to play. Amongst these four areas, two are directly related with the broad aspect of policy framing, implementing and building policy credibility to give the business firms the confidence to ensure that policy interventions are crafted to fit local conditions and local administrative capacity.

Developing socially responsible corporate culture in corporate self-regulation is one of the areas that require special treatment particularly in the labour intensive least developed countries. Again, although macro policies are undeniably important, there is an increasing consensus that the quality of business regulation and the institutions that enforce regulations are a key determinant of success of incorporation of CSR principles in companies (WB 2004).



For this development, the roles of government in the macro economic reforms are necessary. According to Doing Business in 2005, reforms in business regulations can be highly beneficial to economic growth and poverty reduction and at the same time, in contrast, cumbersome business regulations hurt the poor in particular (IMF 2003). At this point, Halina Ward mentions four roles of the public sector (Ward 2004). One of the roles is ‘mandating’ laws and regulatory sanctions. Public sector can also mandate companies to associate governmental organizations to control some aspect of their investment and operations. ‘Facilitating’, ‘Partnering’ and ‘Endorsing’ are the other three roles through which public sector can introduce and develop CSR oriented corporate regulation (Ward).

The framework of Jane Nelson also mentions the roles of the government to create the enabling environment for responsible business (Nelson 2000). In his framework, he mentions three roles of the government to establish the ‘Rules of the Game’. One role is, ‘command and control regulations’ and the other two roles of the government are: creating government-driven market mechanism and providing government support for voluntary approaches (Nelson). By the ‘command and control regulations’ he means that the government can enforce responsible business practices through binding practices and regulatory frameworks (Nelson). Thus he relates government actively for developing CSR into the business practices of the companies and describes the quasi-regulatory measures as potential means for the government to become active in their roles mentioned above. In this regard, in a 2004 study the World Bank notes:

*...Developing country governments are likely to be successful in improving social and environmental standards if they develop coherent strategies that address all critical elements of the enabling framework: transparent and efficient legal and market based drivers, robust capacities and useful tools and skills (WB 2004).*

Robert B. Reich opined more directly about the role of government and the scope of legal policy in implementing CSR principles. He argues that the government should act as an arbiter to facilitate business performance to fulfil their responsibility in society (Reich 1998). He marked this issue as an important question for a nation and demanded political decision to answer this question. This is because CSR issues are also a part of public policy which is primarily the government’s task. This view is reinforced through a different argument that lays scope to governmental strategies to develop socially responsible corporate culture through regulation, incentive based strategies and different sanctions in laws. This has been seen in some Scandinavia countries where the control/enforcement model is used to ‘eliminate’ the problem of cost externalisation (Broberg 1996 in Bichta 2003:23). To avoid this cost externalisation, he identifies five models of which ‘regulation and control/enforcement model’ is one.

Halina Ward also agrees with the role of policy initiatives for the development of CSR at the national level. She examined the relationship between CSR, law and policy and focused on an understanding of CSR as enabling sustainable development. She argues that the contemporary international context of CSR may require states to revisit basic frameworks for the pursuit of profit and economic growth, with a view to integrating lessons from the last decade of CSR (Ward 2008).

Allan Jergensen of the Copenhagen Centre adds a different dimension in the issues of incorporating CSR principles through law. He denies any conflict between the binding mode of CSR and the market voluntarism

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of CSR.<sup>2</sup> He argues that voluntary and market based CSR is perfectly compatible with regulation. With the argument that CSR does not need to be the off-limit for regulation, he suggests that regulation must be in the form of incentives other than enforced as an obligation. In one of his article, he mentions:

*Policy makers readily- and rightly- punish the negative externalities of business. By the same reasoning they should also reward the positive ones- such as CSR. But in the debate on CSR policy we seem to have forgotten that regulation can just as well be about encouraging business behaviour that produces positive externalities for society.*<sup>3</sup>

Regulatory intervention in corporate self-regulation also depends upon the economic rationales of the objective of such intervention. Hence it is important to determine whether CSR could create economic incentives for companies. There are scholarly works that argue that CSR has economic rationales. For instance, Michel Porter relates economic justification with the institutional approach of CSR. He argues for integrating economic rationales with CSR strategies as this can achieve a competitive advantage for companies (Porter 2002). He further argues that CSR should not remain as a source of public relations of companies rather it should be seen as a part of the long term investment and the effort to secure the enterprises' own sustainability. 'Bottom of the Pyramid' approach suggest that corporate regulation from any perspective should relate societal issues with business operations as this can create an opportunity to reduce the tension between free trade and global capitalism and environmental and social sustainability (Prahalad and Hart 2002). Ananya Reed and Darryl Reed suggest that CSR principles in business operations could act as mediator between market failure, public administrative insufficiency and the aim of sustainable development. He argues that government should manage regulations to set CSR in the mechanisms related with corporate governance. They mention:

*[...] issues such as minimal environmental standards should only be conceived of as issues of CSR under the conditions of institutional failure. Under these conditions, corporations have a responsibility to establish rules, but only on a temporary basis until other more legitimate arrangements can be developed. The basic lessons here are that many issues of CSR should move beyond the realm of CSR by being incorporated into a legal framework and that corporations should support such moves to a CA agenda rather than oppose them (Reed and Reed 2004:6).*

For the companies to align their investment with public policy goals related with CSR issues, they need an enabling environment. In this regard S Thomsen proposes five mechanisms; these are: (1) legislation, regulation and formal institutions; (2) culture, conventions and informal institution; (3) the market mechanism; (4) stakeholder influence; and (5) reputation and public relations (Thomsen 2005). Governments could also play an important role for developing this environment. One of the tools for the government for developing this environment could be the legislations as this can help binding the private and public efforts to strengthen the capacity. Tom Fox, Halina Ward and Bruce Howard have summarized this role as follows (Fox, Ward and Howard 2002:4):

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<sup>2</sup> <<http://www.copenhagencentre.org/csr-law.pdf>> at 2 February 2009

<sup>3</sup> Ibid.

Mandating	"Command and control" legislation	Regulators and inspectorates	Legal and fiscal penalties and rewards
Facilitating	"Enabling" legislation	Creating incentives	Capacity building
	Funding support	Raising awareness	Stimulating markets
Partnering	Combining resources	Stakeholder engagement	Dialogue
Endorsing	Political support		Publicity and praise

The discussion reflects that scholars and practices have accepted CSR as an increasingly important part of business policies. CSR principles are increasingly understood as a policy option through which policy makers could try to balance between the drive of companies for profits and the need of the society in which business makes an impact along the way. This has contributed into the development of the convergence of different strategies in designing law and legal policies. This development can be traced back to the percepts of modern laws. The 'renew deal scholars'<sup>4</sup> subscribe the evolution of modern law through three legal paradigms: first, a system that merely facilitates private ordering; second, a regulatory model and third, progression from the regulatory model towards the governance approach.

In the first paradigm, though the set of formal laws were prominent, economic actors considered the rules as a 'thin regulatory framework for freedom of contract and property security' (Lobel 2004:282). At this stage, private parties were free to carry out their own transactions within a minimal set of rules. This paradigm shifted towards the development of substantive laws within which the thick regulatory state was formed. Of particular importance of this paradigm is the perception of the centralized authority that social subsystems are incapable of self adjustment and hence it deems logical to intervene in diverse areas through their goal oriented legal policies. However this regulatory model often fails to improve compliance because it is fated to be either under-effective or over-effective or distorts other social values. Christine Parker notes that, enforcement of this type of law often fails to improve compliance as they insufficiently deter (Parker 2006). Specifically, the laws that aim to deter for business offences are limited in their effectiveness because it is difficult to detect the type of offence committed by business actors and therefore it is difficult to enforce punishment. These circumstances, if not addressed significantly, leave the laws for making the trap where the penalties for non compliance, as Parker describes, are either too weak or too strong. Due to this trap, the object of the laws usually becomes frustrated as it fails to get required reflection form the regulate (Braithwaite 2002).

The third transformation in the legal paradigm is based on re-constitutive legal strategies that aim to 'restructure subsystems rather than simply prescribe substantive orders' (Stewart 1986:90; Teubner). Janicke and Helmut found references of this line of regulatory transformation. They studied the evolution of environmental laws/regulations in thirteen countries and found that most countries first went for formal market based laws; second, direct control through substantive laws and third, approaches for the reflexive mode of laws that facilitate coordination with the private actors (Janicke and Weidner 1997: 310-12).

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<sup>4</sup> Amongst the regulatory reformers, there is a growing trend of stepping outside of a litigation and rule enforcement regulatory focus to explore alternative conception of law and law making scholarship. Orley Lobel has attempted to draw together such scholarship under an umbrella that she labeled the 'Renew Deal'. For details on 'Renew Deal' see (Lobel 2004) 262-390. Many scholars who are active in a wide variety of field are considered as Renew Deal Scholars. For example, some of these scholars are (Sturm 2001) 458; (Karkkainen 2003; Dorf and Sabel 1998) 943; (Freeman 1997)

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With these move in new governance-type regulatory scholarship, Teubner emphasizes on breaking the taboo circulating in legal thinking and to embrace the hard facts (Teubner 1988). Different schools of thought within legal academia are breaking this taboo and getting out of the conventional models of regulation, administration and adjudication (Charnovitz 1996:282-3). '[P]ointing to the false dilemma between centralized regulation and deregulatory devolution', Orley Lobel argues that there is a growing consensus on the necessity of innovative approaches of law and law making to incorporate social policy goals with self-regulated corporate responsibility (Lobel 2004). Renew deal scholars argue for more governance approach in legal regulation as 'a myriad of policy initiatives in different fields are employing new regulatory approaches in legal practice that reflect this theoretical vision' (Lobel 2004:343). Susan Sturm has summarized the common elements of this type of regulatory governance. She mentions:

*[T]his approach places a focus on regulation through centrally coordinated local problem solving. Public agencies encourage local institutions to solve problems by examining their own practices in relation to common metrics and by comparing themselves to their most successful peers. Problem solving operates through direct involvement of affected and responsible individuals. Information about performance drives this process. Its production and disclosure enable problems to be identified, performance to be compared, pressure for change to mount, and the rules themselves to be revised. Public bodies coordinate, encourage, and hold accountable these participatory, data-driven problem solving processes (Sturm 2006:247).*

To sum up, though the role of the state in incorporating the core principles of CSR is noteworthy in developed economies, its main purpose is to facilitate the private sector. Laws and regulations in these economies for incorporating the ethos of this convergence are not authoritative. Rather, they are advisory and more focused on bringing a broader perspective on the necessity of environmental responsibility in corporate self-regulation to businesses and civil societies. However, the mode of this incorporation is contentious due to the need to synergize two contradictory circumstances (in most instances) in developed economies. On the one hand, they need to respond to the increasing public demand and NGO advocacy to include more enforceable tools to watch over corporate strategies to meet their environmental accountability and social responsibility. On the other hand, they need to ensure that public policies do not hinder the development of economic efficiency and maintain the principles of property rights. In this juxtaposition, the trend of incorporating the ethos of this convergence in developed economies is based on the decentralization of legal power, the pluralization of public actors, and economic incentives. From a general angle, incorporation of CSR notions in corporate self-regulation appear to mostly focus on 'process-oriented regulation' where system-based strategies, enforced self-regulation, management-based strategies, meta-regulation approaches (Rahim 2010), and principle-based strategies coexist to ensure greater flexibility for the regulators while an objective needs to be incorporated in the era of de-regulation (May 2005; Winter and May 2001; Hutter 2006:14; Gunningham, Grabosky and Sinclair 1998; Sparrow 2000; Nagarajan 2008:6).

The trend in incorporating the ethos of the convergence of CSR and CG in developed economies is based on the decentralization of legal power, pluralization of public actors and economic incentives. In weak economy perspective, as it has been discussed earlier, it is unclear how this convergence could be incorporated into the fabric of the socio-economic and environmental regulation of these economies where public-interest

advocacy groups to oversee this convergence are absent, civil society groups are not organized, the media does not have any specific focus on corporate issues, and the corruption rate in general is high.

The role of state in the trend of incorporating the core principles of CSR has been put in juxtaposition with new governance where state-promulgated laws, civil regulation, and market rationale coexist in various interdependent configurations (Shearing and Wood 2003:405; Levi-Faur 2006: 521). This trend allows regulatory intervention in the business so far this intervention helps to create better business case for the companies in general. In this governance, regulatory intervention in the market generally try to relate with the stance on which the involved parties choose to respond; in this governance, prescriptive regulations hold the broader perspective of a specific point of time and the underlying objective of a given subject. In retrospect to this growing consensus and akin to converge the concurrent arguments of pro-business and pro-regulation advocates, scholarly evidence and regulatory best practice imply that the regulatory mechanism or legal strategies should be of mixes of different styles to improve compliance, rather than relying on any single strategy.<sup>5</sup>

#### **4. Conclusion**

The debate between pro-business and pro-regulation advocates over the value of CSR practice and their political effects is no longer dominant in the scholarship related with the implementation of CSR principles. Rather, their nexus in the face of changes in regulatory strategies, corporate governance, and social policies have minimized this controversy over both the potential 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 law could synthesize its different strategies to develop this nexus and/as it could affect existing practices in business and social advocacy.

The contemporary scholarly works implicate that the regulatory strategy to implement CSR principles in corporate regulation should account the necessity of the performance of social responsibility by the companies and the companies should have scopes to cater their internal regulation according to their individual needs and circumstances. According to the percepts of this perspective, the basis of legal regulation and regulatory strategies for implementing these principles in corporate regulation would be:

- (1) Laws and regulatory strategies should not only depend upon the prescriptive mode of legislation and;
- (2) Laws and regulatory strategies for CSR implementation should avoid direct interference into the internal corporate management of companies.

State promulgated laws and policies could, however, have strategies in laws to evaluate corporate self-regulation indirectly; they could connect corporate self-regulation to the public justice, debate and dialogue; they could put private justice of internal management system to the public justice of legal accountability. Law could motivate and facilitate moral or socially responsible reasoning within companies and hence it could also have strategies to connect the internal capacity of corporate self-regulation with external

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<sup>5</sup> For a general discussion on meta-regulation, see (Gilad 2010), (Rahim 2011).

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commitment to self-regulate. Laws and business regulation with these characteristics could catalyze and hold all phases of internal compliance system accountable and responsive to varied social demands to corporate entities. The basis of these legal strategies could be the convergence of the precepts of responsive and reflexive modes of law, as required.

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