

# Management Priority in Corporate Social Responsibility- Analysis for Reforms in Corporate Laws of United Kingdom

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## ABSTRACT

Corporate law governance is necessary for societal concern through the concept of Corporate Social Responsibility (CSR). At any point of time the corporate governance internalities interests should be prioritized but then the extent of prioritization should not defeat the aims and goals of corporate governance for ensuring spirit of social responsibility towards society. The authors of this article show that CSR was within the priority interest of the managerial persons prior to 1948 Company law reforms. But then after 1948 reforms the issue of CSR has now fallen into the domain of priority interest upon the shareholders and capital markets.

Further the authors also like to show how the employees of the company were prioritized in safeguarding their interest pursuant to 1970 Company law reforms. Whist the 2006 Company law reform show as to how the directors of the company should work towards promoting companies interest for the benefit of its members.

The authors analysis the aftermath of 2006 reforms, consequential financial crisis of 2008 and the possible impacts of Britain exiting from European Union.

## 1. Introduction

A well settled corporate governance indicates a well balanced conflicting interest of companies and societal interest. Corporate Social Responsibility is an excellent innovation for promoting societal interest through the law and policies of corporate governance. United Kingdom has been shifting its focus of Corporate Social Responsibility as and when there are Corporate Law Reforms in that jurisdiction.

The authors of this article depict the various Corporate Law Reforms that were undertaken before 1948, post 1948, followed by reforms of 1970 and the 2006 reforms in United Kingdom Company Law. United Kingdom experienced financial crisis in the year 2008 and is ahead for referendum for exiting from European Union therefore the authors of this article wish to analysis the prospects of Corporate Social Responsibility in the aftermath of financial crisis followed by the 2016 reforms focusing on executive pay, directors' duties and the composition of boardrooms, including worker representation and gender balance in executive position in the corporate governance<sup>1</sup> and the exiting of Britain from European Union.

## 2. Pre 1948 Position of Corporate Law and Governance In United Kingdom

United Kingdom's Company law normally was shareholder centering because its origin was in the law of Partnership. It was understood that in UK the commercial interest of the shareholders at a many occasion prioritized the interest of the company, though the directors had power to safeguard the interest of the company subject to point that the safeguards by directors is to the business of the company incidental.

In addition there were procedural restrictions on the availability of the derivative action, which made it difficult for shareholder to bring action for breach of duty against the directors.<sup>2</sup>

The courts in UK could not appreciate effectively the safeguards undertaken by the directors in protecting the interest of company due to the reasons that the interest were not properly defined by the courts

It was common to include a requirement that directors hold qualification shares, there is no doubt that this brought the interest of shareholders into greater focus.<sup>3</sup>

As time went on the role of the directors increased due to their professionency as a result the British Government was able to balance the competing interest between labor and capital.

In the middle of the 20<sup>th</sup> century (1958) the professionencies of the managers working in the company were required to safeguard the interest of four parties in an industry namely labor, capital, management and the community.

This in way resulted in not safeguarding the interest of the shareholder of a company ultimately leading to lack of protecting societal interest by the companies.

<sup>2</sup> Foss v. Harbottle (1843)2 Hare 461, 463 finding that corporations should normally sue in their own name.

<sup>3</sup> Gareth Campbell & John D. Turner, Substitutes for Legal Protection Corporate Governance and Dividends in Victorian Britain, 64 Econ. Hist. Rev.571,582 (2011).

<sup>1</sup> Corporate Governance inquiry Launch Parliament (Sept 16, 2016), <http://www.parliament.uk/business/committies-a-z/commons>

### 3. Post 1948 Company Reforms In United Kingdom

In 1943 a committee was appointed known as the Cohen's committee to suggest amendments in the Companies Act 1929 in the matter of safeguarding the interest of the investors and the public interest. However, the committee focused most of its attention on the protection of shareholders. and there was no explicit consideration of how the law could provide further safeguards for public interest.

Justice Cohen and its committee members Prof. Goodhart were in favour of safeguarding interest of the shareholders as a result they recommended for the removal of directors by the shareholders when ever director fail to safeguard the interest of shareholders without any contractual right for compensation to the directors.

However, from the early 1950s, shortly after the implementation of the Cohen committee's reforms in form of Section 184 Companies Act 1948, a wave of hostile takeover struck British companies<sup>4</sup> and was difficult for the directors to control such hostile takeovers.

The Cohen committee changes greatly limited the scope for the corporate social responsibility. Whilst managers still had considerable legal latitude to take account of, or balance, a range of social interest, they were in practice subject to considerable market pressure to prioritize returns to shareholders.

The Cohen committee reforms in company did not promote in way for encouraging corporate social responsibility as result the managers of the company were less vocal on the issue of Corporate Social Responsibility.<sup>5</sup>

### 4. Companies Reforms of 1970 In United Kingdom

During the 1970 reforms in company law though there was scope for industrial democracy yet the political pressure only resulted toothless duty requiring directors to consider the interest of employees.<sup>6</sup> however, industrial democracy was a banner carried not only by varied but often opposed groups, comprising a variety of different demands, ranging from greater trade union involvement in decisions, to experiments with worker representatives on boards.<sup>7</sup> to legally mandated worker directors.

Fifth Company Law Directive which threatens to mandate German style co-determination for all large companies more importantly, it laid down a blueprint for both corporate governance and corporate social responsibility, which acted as a starting point for the Cadbury Committee.<sup>8</sup>

In 1973 White Paper, this also recognized that company directors should "on behalf of the shareholders. Discharge

<sup>4</sup> George Bull & Anthony Vice, BID for Power 29-32(1961)

<sup>5</sup> Henry G Manner, Merger and Market for Corporate Control, 73 J. POL.Econ.110 112 (1965).

<sup>6</sup> Lord Wedderburn, The Legal Development of Corporate Responsibility: for whom will Corporate Managers. be Trustees? in corporate Governance and Directors Liabilities 3, 32-33.

<sup>7</sup> Donovan Report Para 1005.

<sup>8</sup> Minutes of Second meeting of the CBI Steering Group on Long termism and Corporate Governance CAD-010177.pdf.

their social responsibilities" and therefore "have a manifest obligation towards all those with whom they have dealing and none more than so than the employees of the company."<sup>9</sup>

Trade unions were progressively weakened during Thatcher government. It was during this period that companies began to embrace CSR in earnest,<sup>10</sup> but the scope of company law remained undisturbed until the Company Law Review process which took place over a number of years at the beginning of the twenty first century.

### 5. United Kingdom Company Law Reforms-2006

The Company Law Review Steering Group Report which stood for a long standing company law reforms in the history of UK. However the said committee report did not emphasis anything on Corporate Social responsibility.

The 2006 reforms of company law emphasized more for again share holders priority interest and as per law reflected in section 309 and section 172 of companies Act directors should sub serve and safeguard the interest of shareholder.

Due to the afore mentioned change in corporate governance in protecting shareholder interest it led to disinvestment of pension and insurance funds of employees to public investment in the form of hedge funds and private equity. Ultimately leading to less scope for corporate social responsibility in UK.

### 6. The Prospects for Corporate Social Responsibility In United Kingdom

The authors of this article has shown that changes to Company Law since 1948, and the changes to corporate governance that followed, have gradually reduced the scope for managerial led CSR initiatives.

More recently however CSR has come to be viewed in policy and academic debates as a means of governance of economic activity in pursuit of both economic efficiency and social justice. This can be seen most starkly in the European Commission's changing definition of CSR, which moved from purely voluntary action on the part of companies intended to make the world a better place<sup>11</sup> to action by companies to address their impacts in society.<sup>12</sup>

The legal and policy changes during the second half of the twentieth century progressively empowered shareholders and became a key limiter of CSR activities, rather than a legal distinction between "ethical" and "strategic" CSR.

However the authors of this article end on a positive note by pointing to tentative signs of change in the wake of UK's

<sup>9</sup> Department of Trade and Industry, Company Law Reform, 1973, Cmnd.5391, at 5 (UK).

<sup>10</sup> Daniel Kinderman, Free Us up so We Can be Responsible! The Co Evolution of CSR And Neo Liberalism in the UK, 1977-2010, 10 Socio Economic Rev. 29, 29 (2012).

<sup>11</sup> Commission Green Paper on Promoting a European Framework for Corporate social Responsibility, at 8 COM 366 final (July 18, 2001).

<sup>12</sup> Donna J. Wood, Corporate Performance Revised, 16 ACAD, MGMT. REV 691, 698 (1991).

referendum decision to leave the European Union. Surprisingly, given its historical opposition to the EU's attempts to widen the scope of corporate governance, the UK is now considering far reaching changes to corporate governance, including the reconstitution of boards and remuneration committee to include employee representative.

## **7. Conclusion**

The recent thought for reforms that embedded wider social responsibilities in law would represent a marked improvement on the current constrained voluntarism approach to CSR. They would make it more likely that companies will take greater responsibility for the impact on society.