

Comparison of Corporate Social Responsibility between China and Foreign Countries under the New Situation: Taking Public Health Emergency as the Background

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ABSTRACT

Corporate social responsibility (CSR) has been proposed until now, which has attracted the attention of all sectors of society, especially in environmental protection, life and health. More and more people call on enterprises to take more social responsibilities. Based on the background of covid-19, this paper compares the different methods of Chinese and foreign enterprises in coping with new coronary pneumonia, explores the reasons for the differences in corporate social responsibility between China and foreign countries, and puts forward suggestions for the future development of China.

Keywords: *Corporate Social Responsibility, mandatory, voluntary, diversified governance*

1. INTRODUCTION

Since December 2019, the outbreak of the coronavirus (COVID-19) has had a huge impact on the world, and has aroused widespread concern in the whole society. Almost all countries have been involved in this catastrophe without exception. Under this kind of global disaster, the response of different countries and different types of enterprises in emergency work is completely different. Many large enterprises and financial institutions in China set up emergency teams during the epidemic. For example, SAIC General Motors changed its car workshops into mask factories to produce anti-epidemic materials during the early stage of the epidemic. [1] Enterprises are still required by the government to pay wages in accordance with labor contracts during the epidemic.[2] At the same time, some large European companies have announced layoff plans. Among the British companies that have announced layoffs, British Airways, easyJet and Virgin Atlantic will lay off nearly 20,000 jobs. The New York Times reported in August that in the coming weeks and months, Boots, Preta Manger and other high street retail and food stores will lay off at least 15,000 employees. At BP, there will be 10,000 office positions, most of which will be completed by the end of the year. Thousands of unstable temporary contracts and "standby" contracts are also at risk.[3] Corporate Social Responsibility (CSR) is usually understood as voluntary actions taken by companies for the benefit of the environment and society as a whole.[4] The concept of CSR is focused on interacting with stakeholders on a voluntary basis.[5] However, it can be seen that under the influence of health emergencies, there are many differences in the response measures of different companies, reflecting the different responses of different companies to corporate social

responsibility. It also reflects in a deeper level the differences in legal systems, legal culture, social governance structures, etc. in different regions, countries, and regions. This article compares the different responses of Chinese and foreign companies to the epidemic, discusses whether the government should take the lead in calling on companies to undertake more corporate social responsibility under special circumstances, and give some suggestions for China's future development after the discussion.

2. The theoretical basis of CSR

2.1. The economic theoretical basis of CSR

CSR is the academic abbreviation of the Corporate Social Responsibility. However, its specific meaning and scope have always been controversial. For example, "society" usually refers to social issues such as health, education, and safety. These issues are usually considered to be within the scope of government responsibility rather than corporate responsibility. This has led to different people's different views on the nature of CSR.[6] CSR did not exist in the initial company development, even if it exists, it is strictly limited to the scope of the commercial contract.[7] In classical economics, Adam Smith believed that the activities of market entities are activities to achieve social responsibility. It can be said that the pursuit of CSR is the pursuit of their own interests.[8] The famous American economist and Nobel Prize winner Milton Friedman, represented by neoclassical economists, also oppose the concept of corporate social responsibility. He advocated that "a company has only one and only one social responsibility-within the scope permitted by laws and

regulations, to use its resources and engage in activities aimed at increasing its profits." [9] In South Korea, there is also a business law scholar, Professor Li Zhesong, who believes that the statement of CSR violates the essence of a purely profit-making organization. [10] However, with the socialization of production and the development of the free market economy in the 19th century, a series of market-related external problems have emerged, such as environmental pollution, worsening labor conditions, and the polarization between the rich and the poor, which have had a major impact on the sustainable development of society and economy. Therefore, the moral condemnation of market players is also increasing. [8] In 1924, American scholar Oliver Shelton first proposed the concept of CSR. He linked corporate social responsibility with the responsibility of business operators to provide various human needs inside and outside the industry, and believed that corporate social responsibility includes moral obligations. [11] In 1953, Howard R. Bowen, another American scholar, published the book "The Social Responsibility of Entrepreneurs", which brought corporate social responsibility into people's field of vision. [12] Until today, it has become a consensus that companies need to assume social responsibilities, but there is still no final conclusion about what and how to undertake, especially in China, the specific scope and manner of corporate social responsibility are even more vague.

2.2. The legal theoretical basis of CSR

At the beginning of the concept of CSR, it was recognized as a kind of moral responsibility, but there is a scholar believed that corporate social responsibility was originally "moral responsibility", which does not mean that corporate social responsibility is moral responsibility. [8] Professor Ostar from the University of Oklahoma in the United States also pointed out that "it is difficult to only discuss the social responsibility of businessmen without involving the law, because social responsibility and legal responsibility are always intertwined. Legal responsibility can be enforced through legal sanctions such as fines, imprisonment, or civil liability. In comparison, social responsibility also includes those that cannot be enforced through legal sanctions. Social responsibility obviously includes legal responsibility, but its concept is broader than the latter." [13] Therefore, over time and social development, part of CSR (especially the bottom line of corporate ethics) has gradually risen to (broadly) legal requirements. For the undertaking of some social responsibilities, the law directly imposes coercion on the company, and moral responsibility becomes legal responsibility at this time. For example, relevant regulations in China's current natural resource law, environmental protection law, labor law, social security law, and company law. [14] For the undertaking of other social responsibilities, sometimes the law requires the enterprise in the form of encouragement or general obligation, but the law cannot directly force the enterprise

to assume it. This kind of social responsibility can be called a narrow soft law responsibility; sometimes, social communities and organizations other than the formal legislative body may impose requirements on enterprises in a standardized way. This kind of social responsibility is also not mandatory by the state, which is a soft law responsibility in a broad sense

3. Analysis of the reasons for the differences in CSR between Chinese and foreign enterprises

3.1. Chinese and foreign citizens have different awareness of rights and obligations, their legal needs and the history of legal systems are different

The legal standard of Chinese traditional legal culture is obligation, and the traditional Chinese natural economy is a closed economic system. In the period of clan society, China has formed a group relationship with blood as a link, which is characterized by self-sufficiency. In Chinese feudal society, the emperor holds the power of life and death of the people, the subject and the people are only the object of the legal relationship. [15] In addition, since the Western Zhou Dynasty, China has begun the development of systematization and standardization of "rituals", combining the clan and the country, with a clear hierarchy. [16] After the Western Zhou Dynasty, the development and evolution of various thoughts also developed from "rituals", especially "Confucianism", even filial piety to parents and friendly brothers linked politics together, and strengthened the patriarchal system. [17] To sum up, in the long years of China's transition from clan society to feudal society, the long-term rule of the ancient Chinese society by blood relationship, family patriarchal system and the unique "ritual" have an inevitable connection to the formation and long-term existence of China's "obligation-based law". Professor Zhang Jinfan's "Tradition and Modern Transformation of Chinese Law" also said: "In ancient China's classic royal chapters, although the obligations of the common people were specified in detail, there were no clear regulations on the rights of the common people." [18] Therefore, the development history of traditional Chinese legal culture can be said to be the development history of obligatory legal culture. According to the history of the development of Chinese law, the attribute of Chinese traditional legal culture is public law, and public law is the most important; since ancient times, China has followed statutory laws, treating public power as the supreme right, focusing on compliance with government policies, and fulfilling obligations as a contribution to the country. Therefore, during the special period of COVID-19, the Chinese government has responded with "quarantine" and "masks" as the main policy response, requiring companies to

suspend work and production, and resuming work and production after the epidemic has improved and making regulations about salary and layoffs. It is precisely because of the public power-based legal consciousness and the duty-based legal system that citizens have responded positively to national policies, which has also caused China to behave differently from foreign countries in this disaster.

The West is different from China. The West has emerged as a city-state, and the power-based law of the West has gradually formed with the gradual rise of city-states and the establishment of civil law. Giuseppe believes that the development of the city-state will definitely determine and consolidate the community of citizens, which will lead to the gradual formation of a law that is regarded as the citizen's own.[19] Especially during the Roman Empire, the law has developed unprecedentedly, and legal thought has risen unprecedentedly.

During the Justinian period, five great jurists appeared and began to compile civil codes. Since the formulation of the code was mainly the result of the common people fighting for the rights of the nobles, the nobles compromised and made concessions. Therefore, the "Encyclopaedia of Justinian National Law" is entirely a civil code, and its significance lies in the importance of the 'individual', and its great contribution to mankind lies in its liberation of the individual from the authority of ancient society.[20] In addition, the humanistic trend of thought has also risen with the development of commerce. The commodity economy must complete economic activities through the exchange of products. Therefore, it is necessary to break the self-sufficient closed economic model to strengthen the awareness of individual rights. After World War II, with the revival of natural law theory, individual rights were once again emphasized. Many countries in Western society have reaffirmed individual rights. In 1954, the Council of Europe adopted the "European Convention on Human Rights"; during this period, the United States also established the famous "Miranda Rules" in the form of jurisprudence.[13] All this shows that the "right-based" has been re-established in Western law.

Therefore, different socio-economic backgrounds determine different legal texts. Since ancient times, Chinese society has been highly hierarchical and the awareness of rights has been suppressed, while the West has been guided by the concept of individuality. After the long historical development of different legal cultures of the two parties, there are bound to be great differences in contemporary legal systems and cultures. This difference is reflected in all aspects of society, and must also be reflected in the aspect of CSR. Based on this difference and culture of rights and obligations between China and the West from ancient times to the present, it has also led to differences in the autonomy of the two companies in assuming social responsibilities and the cognition of the scope of responsibility.

3.2. Differences in the nature of business ownership

Companies with different ownerships have big differences in the performance of their social responsibilities. The difference in corporate ownership will result in different corporate goals. China's state-owned enterprises are a means of government intervention in the market. In addition to the economic goals of general enterprises, state-owned enterprises also have non-economic goals. State-owned enterprises need to assume social responsibilities to achieve non-economic goals.[21] State-owned enterprises will not only pay attention to economic goals, but also social benefits due to factors such as ownership attributes. The means for state-owned enterprises to pursue social benefits goals is to fulfill social responsibilities.[22] Therefore, for state-owned enterprises, more consideration of social benefits is more conducive to the long-term development of the company, especially when donating during major disasters, it is conducive to express support for the organization. Some private enterprises are not as good as state-owned enterprises in fulfilling their corporate social responsibilities due to their own irregular operation and management.[23] In addition, private enterprises are relatively lagging behind state-owned enterprises in performing social corporate responsibilities. Most small and medium-sized private enterprises have irregular, utilitarian and blind behaviours in bearing CSR. Western state-owned enterprises account for a relatively small proportion. Compared with state-owned enterprises, private enterprises are not subject to policy restrictions, are more susceptible to economic policies, and are less active in bearing social responsibilities.[24]

The West integrates corporate social responsibility into corporate governance. A few countries will raise CSR to the level of national strategy, such as Germany and India. As early as the "Weimar Constitution" in 1919, the German government proposed that companies should take into account public interests. Although this law was later abolished, the company's tradition of protecting employees and public interests has been preserved.[25] Germany has built a system of employee participation, putting labor conflicts and employee conflicts in the system to protect the interests of employees. The West does not have a complex form similar to the development of Chinese enterprises. For German companies, more of a corporate responsibility is to donate to charitable organizations, and the German government has tax incentives for corporate donations, so companies take the initiative to assume corporate social responsibility under the influence of taxation.[26]

Therefore, the different international forms have caused us to have a different corporate nature in relation to international people's livelihood, and a different approach to corporate social responsibility. China's state-owned enterprises are controlled by the government and are, to some extent, government-owned companies. Although China is currently eager to privatize state-owned

enterprises, its systems and internal corporate governance still follow state-owned standards, including employees' welfare, public interest, etc. Therefore, to some extent, state-owned enterprises need to undertake part of the responsibilities of the government, especially in emergencies, like the COVID-19.

3.3. Differences in social governance models

The concept of modern social governance starts from the background of the transformation of government functions and redefines the power distribution and working methods of the government and social subjects; emphasizes the mutual dependence and mutual restraint between governance subjects, and multiple subjects realize the continuous management of social public affairs through consultation and cooperation. The "good governance" reached on this basis is a social management process that maximizes public interests. The core point is that the national and social forces, the public and private sectors, the government, social organizations and citizens jointly govern and manage a society. This diversification of governance bodies can, to a certain extent, make up for and complement the areas where companies have not assumed social responsibilities.[27]

According to the latest data from the public service platform of Chinese social organizations [28], as of May 27, 2020, there were 873,970 social organizations nationwide, of which 2,277 were registered with the Ministry of Civil Affairs, accounting for only 0.26% of the total. From the perspective of spatial distribution, the distribution of southern social organizations is more concentrated, and the "polarization effect" is more significant. Its "central poles" are mainly concentrated in the Yangtze River Delta, the Pearl River Delta, and Chengdu and Chongqing in the southwest. The Beijing-Tianjin-Hebei region induced the creation and development of social organizations because of its political dominant direction.[29] In addition, the growth rate of social organizations in China has declined in recent years. Chen Youhua believes that it is precisely because of the reduction in government resource support that social organizations can capture, and the changes in the internal and external environment that it needs to face have caused its growth rate to slow down. Faced with the sudden outbreak of the new crown epidemic, it has intensified the operational risks of social organizations and has a greater impact on small, medium and micro social organizations. As a result, more and more social organizations have fallen into "survival difficulties." And in this epidemic, there are four main forces that play the role of "backbone": public security personnel, medical and health personnel, community neighbourhood committee personnel, and property company personnel. In comparison, social organizations mostly played the role of "flag-boomers" during the epidemic.[29] This also reflects the weak specialization, weak business technology, small scale and lack of resources of current Chinese social organizations.

Therefore, social organizations can only play such a role in the face of major sudden public epidemics.

Compared with China, Western social organizations are more developed. Take the United Kingdom as an example. For a long time, the British government has upheld the political tradition of limited government and the governance concept of "small government, big society". British NGOs (Non-Governmental Organizations) have played an important role in social governance, becoming an important force to promote the economic and social development and cultural heritage of the United Kingdom, enhance the awareness of the British "community", and promote social integration.[30] There are a large number of charitable organizations in the UK. According to the data released by the British Charity Commission on September 30, 2018, there are 168,186 charitable organizations in the UK, with an average of 25 per 10,000 people. And social participation is extremely high, 91% of charity activities are carried out entirely by volunteers, and 21 million British people participate in voluntary services every year (this number is equivalent to the number of British adults), which is equivalent to a value of 23.9 billion pounds. Basically, 44% of the British public donate to charitable organizations every month, which is highly recognized by the public.[30] The large number of volunteers and support has also contributed to the financial strength of British charities. Volunteers from charity organizations have provided voluntary services equivalent to about 23 billion pounds, and nearly half of the research and development results of medicine are funded by charity organizations. In addition, the United Kingdom has established a special "Charity Law" to comprehensively regulate the management of charitable organizations, the establishment and registration of charitable organizations, the audit of charitable organizations, the information disclosure obligations of charitable organizations, the regulation of fundraising behavior, and the supervision of illegal behaviors. Systematic regulations have formed a relatively complete legal system for charity.

Therefore, there are many differences in social organizations between China and foreign countries. To an appropriate extent, social organizations have helped the government assume part of its responsibilities. However, in the absence of social organizations and the government's burdens are too much and too complicated, it naturally calls on companies to take the initiative to assume part of their social responsibilities, so as to make certain contributions to social governance.

4. Legal advice on perfecting CSR under the new situation in China

4.1. According to different situations, clarify the criteria for determining CSR

The premise of legal advice is to clarify the legal responsibilities of CSR in China and confirm the legal

form of CSR. In other words, in different situations or when facing different social issues, the connotation and extension of CSR should be interpreted differently. For example, Article 214 of the British Bankruptcy Act of 1986 stipulates that if a company director or shadow director knows or should know that the company's bankruptcy liquidation is inevitable, but continues to manipulate the company to conduct transactions without taking active measures to minimize the potential losses of creditors, the transaction performed at this time is wrongful trading.[31] Under these circumstances, The court can require shareholders to subscribe for the company's unissued shares. These regulations have become the legal basis for safeguarding employees, creditors and other stakeholders, laying a legal basis for CSR. The Sarbanes-Oxley Act of 2002 in the United States has also increased penalties for companies that neglect their social responsibilities and violate relevant interests. In recent decades, the United States has been adopting various laws and regulations to regulate the behavior of companies, using law enforcement methods to protect product safety, the interests of stakeholders, while protecting the environment and defending fair competition.[32] Therefore, in the case of infringement of the life safety rights and health rights of others, or serious harm to society, the connotation of CSR should be expanded and explained, and its scope should be expanded. Characterizing the infringement as a violation of CSR regulations can facilitate the construction and enforcement of subsequent regulations. China's current mandatory regulations on corporate social responsibility are sporadically reflected in legislation such as the Bankruptcy Law, Product Quality Law, Consumer Protection Law, Anti-monopoly law, anti-unfair competition law, labor law, social insurance law, environmental and resource protection law, tax law, etc. But there is no connection with CSR. Therefore, when infringements involving these aspects occur, the connotation and concept of CSR should be expanded and explained. In addition, when CSR's infringement only stops at the moral aspect and does not cause actual damage to anyone, the relevant legal provisions should be condensed in interpretation, the meaning of the text should be restricted, the scope of application should be narrowed, and cases that should not be covered by the law should be excluded.

4.2. Improve the legislative system and clarify the specific CSR commitment method

At present, CSR is getting more and more attention, but there is an extremely uneven development of the responsibility dimension, as well as chaotic situations such as rushing to formulate responsibility standards, establish evaluation mechanisms, and launch release platforms. At the same time, the institutionalized content lacks key breakthroughs, and it is difficult to coordinate form and content. Moreover, China's economic market is complex, large enterprises and multinational companies have

superior conditions, strong economic strength, and relatively higher technological and management levels. Therefore, higher CSR standards are generally established. However, the economic conditions of small and medium-sized enterprises and large-scale enterprises are quite different, and it is difficult to compare large-scale enterprises to assume responsibility, and there is no model responsibility model mechanism in the industry at the same level.[33] It is also difficult to compare the same commitment standard between different industries. In addition, China's current CSR is mainly manifested in the form of information disclosure, but the proportion of voluntary disclosure responsibilities is relatively small, and more concentrated in large state-owned companies and listed companies. At the same time, the content disclosed is not complete and specific. More information about donations, energy conservation and environmental protection labor rights is disclosed, and key data such as current assets, hourly wages of employees, and casualties are rarely disclosed.

Therefore, China should improve the legislative system related to CSR and stipulate the guiding ideology of CSR at the national level, and the specific operation methods and implementation rules can be divided into the work regulations of different company sizes or different industries. For example, in India, it is stipulated that large enterprises that reach the profit level must use 2% of the net profit as the CSR expenditure standard. Although this regulation has received a lot of criticism and criticism, it cannot be denied that it has improved the country's corporate social responsibility level to a certain extent. China is currently a developing country, just like India. The national economy and corporate legal system are under development. There is a large gap in the level of enterprises within the country. Therefore, stipulating a fixed CSR expenditure level for large enterprises in the early stage of CSR development is conducive to optimizing the national CSR environment and improving CSR levels, and can also play a certain leading role for small and medium enterprises.

4.3. Strengthen the role of social organizations based on the theory of diversified governance

At present, there are more than 870,000 social organizations in China, and these social organizations have become important subjects of social governance. But as mentioned above, although the number is large, the spatial distribution is uneven and its actual utility is not satisfactory, and the participation of the people is not high. To a certain extent, many social organizations have become empty-head organizations. After the implementation of the "Charity Law of the People's Republic of China" in September 2016, relevant supporting management regulations for charitable organizations were successively promulgated; in August 2018, the Ministry of Civil Affairs solicited public opinions on the revision of the "Regulations on the

Registration and Management of Social Organizations", which can foresee Chinese social organization system construction will accelerate development.[30] In this context, the relevant experience of the supervision system of charitable organization in British has certain enlightening significance for the construction of China's social organization system. The management of social organizations in China must improve the concept of supervision. The government needs to guide and support to promote its standardized construction, establish special state subsidies or increase tax incentives and other incentives to institutionalize project applications, and at the same time strengthen the social supervision system and improve supervision efficiency. China can learn from the direct management model of the British Charity Commission's management structure, implement comprehensive law enforcement in cities and counties, and coordinate law enforcement forces. At the same time, improve the legislative level of information disclosure of social organizations, clarify the content of information disclosure of social organizations and the obligations of relevant functional departments in relevant laws and regulations.[27] In addition, speed up the realization of information sharing among social organizations. Strengthen coordination and cooperation with public security, fiscal and taxation, auditing, judicial, market supervision and other departments. For example, the "Freedom of Information Act" in the United Kingdom integrates the management information of social organizations involving other departments on the work platform and realizes the instant sharing of work information. Therefore, China should learn from the successful experience of foreign countries and enrich the subject boundary of CSR through cooperative governance and decentralization of power to the private sector.

5. CONCLUSION

Corporate social responsibility has always appeared in a voluntary form. Most countries have developed their legal responsibilities into soft-law responsibilities, making their soft-law responsibilities and moral responsibilities coexist. But this cannot be guaranteed by national coercive force. It is also due to the lack of national coercive force that the realization of soft-legged corporate social responsibility has generally become uncertain. At this time, whether corporate social responsibility should be subject to more legal restrictions and whether to expand the scope of its legal responsibility has aroused people's discussion. Especially in the context of public safety emergencies in 2020, more and more people are beginning to call on companies to assume more social responsibilities. So, CSR should be achieved to some extent through legal provisions or government regulations, especially when China's economic market is uneven, rigid regulations are conducive to improving China's overall CSR level. However, compulsory regulations are not a long-term solution. With the development of China's economy, the

government should appropriately adjust its related policies, integrate CSR more into corporate governance, and resolve it within the company.

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