

## Corporate Social Responsibility to Employees: Considering Common Law Vis-à-vis Islamic Law Principles

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### ABSTRACT

Corporate Social Responsibility (CSR) is a Western concept. It basically advocates that the corporation, a juridical person, has a great impact on modern society, whereby it engages itself in economic activities, makes profits and contributes to national economy by paying taxes, employing human persons, and meeting people's needs by producing products and providing services. On top of everything, however, its prime objective is to earn profits for the shareholders. Scholars argue that along with this objective, the corporation owes responsibilities to other stakeholders, such as the creditors, employees, consumers, environment and the community as a whole. In other words, profits should not be its sole target; it should take care of the interests of other stakeholders. Islamic scholars have found the concept coincides well with *Shari'ah* in general, as it holds some reservations with respect to particular issues. This paper considers CSR owed to employees from a comparative view point, i.e. common law versus Islamic law.

**Keywords:** Corporate personality, corporate social responsibility, CSR, employers' obligations, Islamic law, and *Maslahah* (public interest)

### INTRODUCTION

In the present world, corporations have emerged, both nationally and internationally, as humongous economic powers. There are many multinational corporations (MNCs) whose annual income surpasses the combined gross domestic products (GDP) of a significant number of less developed countries (LDCs) (Bantekas, 2004). Corporate affairs, therefore, matter for the society. They (corporations) may not pay the employees and workers well, or provide them with a good working environment. They may manufacture products which are unwholesome and thus, are not good for the consumers. Moreover, they may pollute the environment in the process of manufacturing their products,

which, in turn, may injure the people and other beings. In this vein, corporations, in one way or other, affect the interests of various stakeholders. As such, they are not merely economic entities that are devoted to the shareholders' interest of maximisation of profits. Rather, they are social organisations which owe responsibilities to all stakeholders and the society as a whole (CSR) (Sheikh, 1996).

How does Islam perceive the concept of CSR? Does the Islamic conception agree well with the traditional view? This article is an attempt to answer these questions, with a particular reference to employees, one of the important stakeholders. The reason behind this undertaking is to dispel the common misunderstanding that the Islamic law is

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antagonistic to the traditional laws. Both the Islamic law and the common law are two old legal systems with rich heritages. A comparison between them should be interesting to comparative lawyers and also to common readers.

The article starts with an overview of the theoretical perspectives of the West and Islam. In this respect, Dusuki's (2008) comparative research, i.e. "What does Islam Say about Corporate Social Responsibility?" has been of much assistance. In the same line of Dusuki, the present work briefly discusses different Western theories of CSR. With regards to the Islamic perspective, however, it differs from Dusuki's in approach. In particular, it considers the issue from *maslahah* (public interest) perspective. *Maslahah* is a subsidiary source of the Islamic jurisprudence which was developed by Imam Malik, the founder of the Maliki School of Law. Before embarking on discussing CSR, the article considers if corporate personality itself is Islamic or not. This query is important because Muslims, in general, and many scholars, in particular, are not interested in CSR. To them, the very concept of corporation is not Islamic (Zinkin & Williams, 2005). In fact, the concept of corporate personality is debatable. There are two schools of thought; one accepts it as Islamic and the other does not. The present authors argue that the corporation, from the *maslahah* viewpoint, is an Islamic concept and, hence, is CSR. This is followed by a theoretical discourse on *maslahah* and CSR. After that, the article compares the common law provisions of corporate obligations to employees with the Islamic law principles. Finally, the concluding section sums up the findings of the research.

### **THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY (CSR)**

The Western scholars consider the concept of CSR from a number of theoretical perspectives. The firm theorists (classical theory) believe that people engage in business for their self-interest of profits. Adam Smith calls this an "invisible hand" (1776). Many of Smith's

followers maintain that profit maximization is the only corporate social responsibility. Milton Friedman is probably the most prominent of them. According to him, in a free-enterprise and private-property system, 'there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits' (Friedman, 1970). Beyond this, there is no other social responsibility for corporations because they are soulless artificial persons. Of course, individual members of the society, such as corporate executives, can have social responsibilities in the sense of spending their own money for the cause or benefits of his family, friends, club or society. They can do these in their personal or private capacity. Nevertheless, the corporate executives cannot spend the money of the stockholders for social services because being their agents, the former's responsibility is to make profits and profits only, and of course, staying within the bounds of law, social ethics and rules of game, i.e. the rules of open and free competition and without deception or fraud. However, with a partial change of his position later, Friedman acknowledges CSR as a corporate duty provided the CSR activities have bearing on the promotion of the company's financial interest, and '(w)ithout reciprocal interest, corporate responsibilities is not a sustainable idea' (cited in Sheikh, 1996).

In an almost similar tone to the firm theory, the advocates of the strategic CSR (a.k.a. instrumental theory) argue that there is no philanthropic responsibility for public corporations unless they receive financial benefits in return of their services to the society. Otherwise, that will affect the interests of the shareholders for whom the corporation should care in intimate relationships. However, philanthropic activities are appropriate for private firms and individuals (Lantos, 2001, 2002).

On contrary to the firm theory and the strategic theory, the managerialists (stakeholder theory) hold the view that a company owes responsibility to the society, albeit its main objective is to maximise profits. They also visualise that corporations are an economic

power competing with the modern State; in future, they are likely to even supersede it even (Berle & Means, 1932, as cited in Mizruchi, 2004). To them, the corporation is not merely a private business entity, but a social organisation that is responsible to a set of claimants including the shareholders, workers, consumers and the State. Its managers are in charge of rendering obligations to these claimants (Berle & Means, 1932 as cited in Sheikh, 1996). E. Merrick Dodd, the founder of this school, bases his argument on the managers' trusteeship relationship with the company. He also believes that the managers are not the trustees of the shareholders only; rather, they are the trustees of other stakeholders and the society as a whole (Dodd, 1932). For the first time, the American case of *AP Smith Mfg v. Barlow* (1953) seems to have endorsed Dodd's theory by upholding a company's proposed donations to the Princeton University as a part of its wider obligations to the society. Jacobs J. says that "modern conditions require that corporations acknowledge and discharge social as well as private responsibilities as members of the communities within which they operate."

Like the managerialists, the proponents of social contract theory perceive that the corporation is tied to a relationship with the society, but in a different way through an implied contract as it exists between the citizens and the State. They further posit that the social contract binds the corporation and the society in a reciprocal bond of rights and responsibilities. The corporation needs resources from the society to subsist and prosper. At the same time, the society needs assistance from the corporation to solve its problems. The corporation should respond to the social needs as a duty of gratitude (Lantos, 2001). In return, corporations should participate in social service activities alongside other social institutions like family, educational and religious institutions (Lantos, 2001). Thus, corporations should not act only in commercial interest, but rather to fulfil the expectations of the society (Moir, 2001). If, however, it fails to meet the expectations, it will lose its image in the society. In that case, it will be difficult for it to survive. The concern for its survival creates

pressures on the corporation to carry out services to the society. This is known as the legitimacy theory (Dusuki, 2008).

The theories discussed above explain together the justifications of the West for corporations to be engaged in CSR activities. In short, they advocate that "firms engage in CSR to secure their 'license to operate' (legitimacy), whereby the firms are required to meet the interest and demand of the multiple stakeholder groups and honour both the explicit and implicit contracts with various constituents", which will bring them reputation and in turn viability and profitability in the market (Dusuki, 2008).

In order to attain the theoretical goals, CSR has been given legal recognition both nationally and internationally. For example, the English Companies Act 2006 has provided for the protection of stakeholders. Section 172 of the Act requires the directors, while working for the benefits of the shareholders, to have regard, amongst other matters, to the interest of the company's employees, the business relationships with suppliers, customers and others, and the company's operational impact on the community and environment. At the international plain, the Organization for Economic Co-operation and Development (OECD) is the most notable organisation that has adopted CSR Guidelines for multi-national enterprises (MNEs). Part II of the OECD Guidelines outlines that "Enterprises (MNEs) should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders." Following this, they specify a number of matters for the (MNEs) to take care of while operating in host countries. In particular, it asks the MNEs, among others, to:

1. Contribute to the economic, social and environmental progress with a view to achieve sustainable development.
2. Respect the human rights of those affected by their activities, in line with the host government's international obligations and commitments.
3. Encourage human capital formation, in particular, by creating employment

- opportunities and facilitating training opportunities for employees.
4. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
  5. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
  6. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities on practices that contravene the law, the *Guidelines* or the enterprise's policies.

Thus, CSR is an established concept worldwide. Today, corporations are not only responsible to their shareholders; their responsibilities extend to others - "Stakeholders" - who include employees, customers, investors, suppliers, environment and the society as a whole (Bantekas, 2004).

#### CSR FROM THE ISLAMIC PERSPECTIVE

Is "corporation" an Islamic concept? The answer to this question is a precursor to CSR. There are two contending views on this issue. One school of *Ulama* (Islamic scholars) that includes, among others, Mufti Muhammad Taqi Usmani of Pakistan, holds the view that corporation is a juridical person. In the absence of any clear provision in the Qur'an or *Sunnah*, Mufti Usmani compares (analogical deduction called *qiyas*) company with a *waqf* (public endowment). The basic characteristic of a *waqf* is that people dedicate some properties for religious or charitable purpose divesting their ownership in them. Allah becomes the owner of the property. The beneficiaries of the *waqf* enjoy

the benefits which it has been created for. The *waqf* emerges as an entity that is separate from the donors. This institution, which is similar to a corporation, can make contracts, buy and sell properties and, sue and be sued (Usmani, 1999). The other school, namely the Mujlisul Ulama of South Africa, refutes the opinion and the arguments of Mufti Usmani in their book entitled, "*The Concept of Limited Liability-Untenable in the Shari'ah.*" Mujlisul Ulama maintains that Islam does not know any fictitious person; it recognises only natural persons. This is a classical view of the Islamic jurists. To this school, no one can be a person in law who does not have the capacity (*dhimmah*) to acquire rights and execute duties. It is the 'balance-sheet of a person showing his assets and liabilities, in terms of his rights and obligations' (Nyazee, 2002). It is true that in the strict sense, non-natural beings are not recognised as persons. In considering the necessity of the present day society, however, the State may introduce the concept of a juridical person (Nyazee, 2002). Corporations are a commonplace phenomenon in the present world. In the day-to-day life, they are conducting so many types of things, which need no mentioning. Similar to human persons, they hold properties, manufacture things, provide services, employ people, pay taxes to the government, sue others and are also sued by others. In other words, they hold various rights and obligations, which are the jurisprudential criteria for attributing legal personality to a being. Considering this fact, there can be no denial of juridical personality of corporations in Islam (Zahid, 2011).

As discussed above, a corporation can hold rights and obligations because it is a legal person. In other words, rights and obligations are the corollaries of corporate personality. In this sense, the phenomenon of CSR is one of those corollaries. Thus, one author attempted to establish CSR under international law "in the context of an emerging international legal personality for MNEs" (Bantekas, 2004). Now, the Islamic perception of CSR is being proffered in the following.

The Qur'an or *Sunnah* (doings, sayings and approvals of Prophet Muhammad) does not

specifically set out any provisions concerning CSR. It does not, however, mean that Islam does not have anything to do about it. The Qur'an is a "detailed account of everything" (Qur'an, 12: 111). It means the Qur'an has covered all matters of legislation, either by laying down specific provisions or by setting out general principles of law. Specific provisions are not many in the Qur'an. It (the Qur'an) has left a vast area open for human legislation by providing general guiding principles. For example, the Qur'an has legislated in detail on inheritance which is a phenomenon present in every time and society of human civilization. These provisions shall never change over time. There are, however, matters which may change over time and may call for new legislation, given the time, people and place. Regarding such matters, the Qur'an and *Sunnah* have laid down general principles of jurisprudence, which enable the Islamic lawmakers to adopt suitable laws to cater for the needs of the society. One of these general principles is *maslahah* (public interest), which was developed by Imam Malik, the founder of the Maliki School of Islamic jurisprudence. This principle advocates for legislation in the interest of the society where clear provisions of the Qur'an and *Sunnah* are absent. The authority for this principle lies the following Qur'anic verses, "Allah wants ease and comfort and not hardship" (2: 185); "God never intends to impose hardship upon you" (5: 6); "We have sent you (O Prophet Muhammad) but as a mercy for all creatures" (21: 107). Further support comes from the Prophet's saying, "No harm shall be inflicted or reciprocated in Islam" (Bin Hanbal). The whole message given in these words of Allah and His Messenger is that if something is good for the society, it may be adopted and legislated upon by the State, unless that is clearly forbidden by the Qur'an, or *Sunnah* or *Ijma'* (consensus of jurists). For example, for the survival and healthy development of human life, environmental and ecological protection is essential. In the absence of any direct legal provisions in the Qur'an or *Sunnah*, the government may pass laws in this regard. The sole purpose behind this approach of lawmaking

is to bring about benefit to and to prevent harm from people's lives.

*Maslaha* is of three categories, namely, *daririyat* (essentials), *haziyat* (needs), and *tahsiniyat* (embellishments). "Essentials" include five major interests, namely, religion, life, human intellect, family lineage and material wealth (Kamali, 2008). These are the most important types of *maslaha*. An Islamic State is obliged to preserve and protect these interests. "Preservation" is a positive step and "protection" is a negative step by the State. For example, for the well-being of the society, the State must provide a secure environment in which economic activities may take place. This will create material wealth and development for the people living in that State. Thus, the establishment of business organisations like corporations may be considered as "essential" for the public's interest. This is the "preservation" aspect of essentials. If the law related to the establishment and operation of company is violated, the State must punish the culprits so that the public interest of wealth creation is not hampered. This is the "protection" aspect of essentials.

The second category of *maslaha* (needs) include concessions granted to essentials so that the essentials remain in existence. For example, in order for wealth to circulate from the people's savings to company's business, the State may require large companies to have their securities to be listed on a stock exchange and traded in the secondary market. However, small companies cannot meet the requirements of listing. For this reason, they should not be prevented from trading because that will hinder the wealth creation process, which is one of the main public interests under the *Shari'ah*. According to the second category of *maslaha*, namely "needs," such small companies will be granted concession from listing and will be allowed to trade their securities in the "over the counter" market.

The third category of *Maslahah*, "embellishments," is subsidiary, but at the same time complementary, to "essentials." The accomplishment of the former helps the latter. For example, the State may encourage big companies to make (optional) charity to the

poor (which is an embellishment) so that they (the poor) may engage in business activities, maybe at a minimum level. This will solve unemployment problem, at least to some extent, and will help the economic development of the State. Thus, the three tiers of *maslahah* go hand in hand and together they may solve many problems to which the primary sources of *Shari'ah* do not have any direct answers, provided that they fulfil the following conditions:

1. There must be a need to secure a benefit or to prevent a harm of the people in general;
2. There must be no clear *hukm* (provision) in the Qur'an, *Sunnah* or *ijma'* (consensus of Islamic jurists in general), with regard to the act of securing the benefit or preventing the harm;
3. It must be essential to serve a *maslahah* (public interest), such as protection of religion, life, intellect, family lineage, and property;
4. The *maslahah* sought shall not conflict with any *Shari'ah* principle, such as any law legalizing interest (*riba*);
5. The *maslahah* shall be rational and acceptable to the people of sound mind;
6. This method shall not apply to the matters of worship (*ibadat*) (Kamali, 2003; Qadri, 1963).

As said earlier, the primary sources of *Shari'ah* are silent about CSR. In considering their role in various spheres of the modern society, such as investment, production, employment, wealth creation and national and international finance, corporations should be acknowledged to have CSR under the Islamic *Shari'ah* from the *maslahah* viewpoint. The sources of the Islamic law, even the primary sources alone, provide for social responsibility and social justice for human persons, both individual and collective. Those responsibilities may be extended to corporations by analogy. Corporations should be treated as social institutions, and as such are responsible, in addition to making profits, to take

care of the interests of the creditors, suppliers, employees, consumers and the society as a whole. In addition, they should also repay their loans scrupulously as Allah requires fulfilment of obligations (Qur'an, 5: 1). Prophet also underlines the matter when he says, in effect, that martyrdom washes off sins except the liability of loan (Muslim). Islam does not, however, tolerate interest-based transactions because through such transactions, the loaner makes economic gains without any risk, regardless of whether the loanee makes profits or losses (Qur'an, 2: 275). This is an economic injustice that Islam wants to stop (Usmani, 2001). This is why the Prophet made the following statement, "May Allah send down His curse on the one who devours *riba* and the one who pays it and on the two witnesses and on the person writing it" (Bin Hanbal). Second, corporations are responsible to the consumers by producing and supplying permissible and good things (*halalan toyyibah*) because such things only Islam allows for consumption; "O mankind! Eat of what is lawful and good on the earth..." (Qur'an, 2: 168). Thus, the production, marketing or selling of pork, wine/intoxicants, pornography, etc. are prohibited. To quote the Prophet, "Allah and His Messenger made illegal the trade of alcoholic liquors, dead animals, pigs, and idols" (Al-Bukhari). Corporations must also be fair in giving full measure and right weight; "And give full measure when you measure, and weigh with a just balance; this is better and fairer for your end" (Qur'an, 17: 35). Their failure in this respect renders them liable for fraud; "Woe to those who deal in fraud. Those who, when they have to receive by measure from men, exact full measure. But when they have to give measure or weight to men, give less than due. Do they not think that they will be called to account?" (Qur'an, 83: 1-4). Though these verses are concerned about weight and measure, they cover all aspects of duty to be just and fair to others (Shafi, 1998). Honest and fair trading is highly rewarded in Islam; "the honest, trustworthy merchant will be with the Prophets, *siddeeqs* (true believers) and martyrs (in Paradise) (Ibn Majah). Third, they must be just to their employees in terms

of payment and other facilities. The Prophet Muhammad says, “Allah has placed them (employees) under you. They are your brothers. So, anyone of you has someone under him, he should feed him out of what he himself eats, clothes him like he himself puts on, and if that be the case, let him not put much burden that he is not able to bear, then lend your help to him” (Al-Bukhari). In the present context, this *hadith* implies that the corporations are responsible to pay the employees in such a way that they can have enough food, shelter, clothing and medication to support their lives (Zahid, 2010). They should not force them (workers) to work beyond their capability. They must not discriminate between them on any ground like language, colour, race, etc., because these have been created by Allah for identification purpose and not for discrimination (Qur’an, 49: 13; 30: 22). In addition, corporations should take care of the environment while conducting business activities as it (environment) is essential for human survival. The purpose of the creation of humankind is the worship of Allah (Qur’an, 51: 56). So, a healthy environment must be maintained so that men can live a sound life and worship their Lord. For this reason, Islam encourages for the preservation of the environment and ecology. The Prophet says, “If the Judgment Day comes when one of you is holding a seedling in his hand, if you are able to plant it before the Day arrives, do so” (Al-Bukhari, 1997). In other words, the Prophet encourages people to foster a green world. “The earth is our first mother. Therefore, it has certain rights over us. One of these rights is making it come alive with green vegetation and other plant life” (Alhilaly, cited in Smith). Animal world is also to be cared for because the members of that world are creations of Allah like humans. The Qur’an says, “there is not an animal in the earth, nor a creature flying on two wings, but they are nations like you” (Qur’an, 6:38). Thus, the Prophet advised, “show mercy and you will be shown mercy” (Al-Bukhari, 1997). At another place he says, “there is a reward in (doing good to) every moist organ (i.e. in every living thing)” (Al-Bukhari, 1997). The rationale behind is that

caring for the living world contributes to the celebration of the praise of Allah (Ahmad, 1999); “the Seven Heavens and Earth and all beings therein celebrate His praise, and there is not a thing but hymns His praise” (Qur’an, 17: 44).

In addition to the specific obligations, the corporations’ overall responsibilities to the society in the form of making charity and all other social welfare works may be gathered from the Qur’an and *Sunnah*. The Qur’an enjoins the believing Muslims that “ye strive (your utmost) in the Cause of Allah, with your property and your persons; that will be best for you, if ye but knew” (Qur’an, 61: 10-11). Here, the call for striving definitely includes the service to the mankind. In this connection, Prophet Muhammad says, “the best of people are those that bring most benefit to the rest of mankind” (Al-Daraqutni, *as cited in* Niamatullah). He encourages helping the poor and destitute; “the one who looks after and works for a widow and for a poor person, is like a warrior fighting for Allah’s cause or like a person who fasts during the day and performs prayers all night” (Al-Bukhari). He further says, “Allah loves to see the results of His beneficence to His servants” (Qutb, 2000). This means that people (including corporations) should not hoard up their wealth (beneficence of Allah) and create economic hardship in the society. “Hardship and poverty constitute the greatest possible denial of the beneficence of Allah, and He disapproves such a denial” (Qutb, 2000). As such, corporations should contribute to social welfare by way of financial contributions and charity to the poor and various social institutions like schools, orphanages, and hospitals. They must not be niggardly or wasteful as both are forbidden by *Shari’ah* (Qur’an, 17: 31). In the same way, Allah and His Messenger prohibit infliction of any harm. Thus, the Qur’an says, “O you believe! Eat not up your property amongst yourselves in vanities; let there be amongst you traffic and trade by mutual goodwill nor kill (or destroy) yourselves; for Allah has been Most Merciful to you” (Qur’an, 4: 29). The Prophet said, “the Muslim is he/she from whose hand and tongue the people are safe” (Al-Tirmizi).

To sum up, the corporation may be recognised as a legal person under the Islamic jurisprudence from the *maslahah* perspective. CSR is a corollary of that personality and should be accepted as an Islamic concept. In this respect, the Islamic CSR is similar to its western counterpart. There is, however, one most important difference between them. The former requires corporations to carry out CSR activities for the pleasure of Allah, while the latter advocates for pursuing it for worldly gains, such as promoting company's market. Nonetheless, this does not mean that Islam denies company's economic pursuits. When a corporation is engaged in CSR activities, it may receive a good name in the society and its products may, as a natural consequence, get a broad market. This is fine as long as the CSR programme is rendered selflessly; the economic gains, if any, cannot be expected in return overtly or covertly. In other words, even if there is any financial loss following CSR activities, the corporation is not exempted from CSR obligations. The following Qur'anic verse is apt to quote in this connection:

*It is not righteousness that you turn your faces towards East or West; but it is Righteousness - to believe in Allaah and the Last Day and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarers, for those who ask; and for the freeing of captives; to be steadfast in prayer, and practice regular charity; to fulfil the contracts which you make; and to be firm and patient in pain and adversity and throughout all period of panic. Such are the people of truth, God-consciousness (Qur'an, 2:177).*

Thus CSR, like any other good deeds in Islam, must be for the pleasure of Allah. If it is for show or for reciprocal interest, it is not acceptable. This is so because Islamic CSR is based on the monotheistic faith, which encompasses every aspect of life of a Muslim.

This is a system of God-consciousness (*Taqwa*). It requires human actions to be motivated with the satisfaction of Allah, not merely for materialistic calculation of gain or loss (Zahid, 2010; Dusuki, 2008).

### **CSR TO EMPLOYEES UNDER COMMON LAW AND ISLAM: A COMPARISON**

In this Section, the principles of common law related to obligations owed to employees, one of the important CSR beneficiaries, would be compared with their Islamic counterparts. Before embarking upon the discussion, a pertinent question should be answered - is CSR a legal concept or ethical? CSR is primarily thought to be an ethical phenomenon. It is not automatically binding on corporations. It is a voluntary matter for them. Over the time, however, this concept has gained popularity in different countries. For example, a survey conducted in Ireland showed that in the assessment of corporate activities, people consider three things the most; namely, their service (81%), their honesty and openness (69%), and product quality (66%) (<http://www.bitc.ie>). As a result, business organisations are taking it seriously and are adopting CSR policies. TOYOTA, for instance, has set out its "CSR Policy: Contribution towards Sustainable Development," which includes its commitments to various beneficiaries, such as customers, shareholders, employees and environment. The objective of the Policy is "to contribute to harmonious and sustainable development of society and the earth through all business activities that we carry out in each country and region, based on our Guiding Principles" (<http://www.toyota-global.com>). Alongside the corporate policies, State governments (such as, the UK, as noticed above) are passing laws to enforce CSR obligations. At the same time, international organisations like the OECD, as mentioned earlier, are also adopting CSR standards (soft laws) for multinational companies. Thus, companies are increasingly becoming bound by laws related to CSR. For example, TOYOTA's CSR Policy states

that “we comply with local, national and international laws and regulations, as well as the spirit thereof and we conduct our business with honesty and integrity.” It proves the fact that CSR is not merely an ethical concept. Instead, it goes beyond and assumes the status of a legal concept. This is so because corporate voluntary actions are not always enough to protect the interests of the CSR beneficiaries. They should go hand-in-hand: “(B)oth voluntary and mandatory rules are necessary and may co-exist to regulate specific matters depending on the different areas or objectives” (Mullerat, 2005). As such, there must be legal means to protect CSR beneficiaries. These legal means may be of different forms, namely, statutes, NGO Guidelines (soft law), contracts, judicial decisions and interpretations, etc.

English law courts have developed rules and principles through the interpretation of statutes and contracts of employment. In the following, those rules and principles are compared with the principles of the Islamic law to judge their comparative merits.

#### *Obligation to Provide Work*

After an employment contract is accomplished, is the employer bound to provide the employee work to do while he/she is paying the agreed salary/wages? This question arose in a number of common law cases. The judges came up with almost similar judgments that in general, so long the employer pays the employee, he/she is not bound to assign him/her work. He/she is, however, bound to give the employee work, if it is of some special type. For example, in the case of an actor, it is important for him to demonstrate his ability in public. So, he should be given contracted work (*Turner v. Sawdon & Company* [1901] 2 KB 653). Similarly, workers who receive wages from commission for their work will lose reputation and publicity if they are not given work (*Marbe v. George Edwardes (Daly's Theatre) Ltd* (1928)). The position of a skilled worker is alike as he/she does not want money only, and he/she wants to contribute to the public, improve his/her skill and have job

satisfaction from the work done (*Langston v. Amalgamated Union of Engineering Workers* (No.2) [1974] ICR 510).

Allah commands Muslims to fulfil their contracts (Qur'an, 5: 1). The fulfillment of employment contract should primarily mean to give work to the employees. Earning livelihood by work is a matter of dignity, which is a special honour Allah has bestowed on every human person. The Qur'an says, “Now, indeed, We have conferred dignity on the children of Adam...” (Qur'an, 17: 70). Paying the employee without letting him/her work is like giving social assistance to unemployed people or giving alms to the poor. It is a humiliation of human dignity. Besides, if the employees are not engaged in work, they may involve themselves in anti-social activities like gambling. Their skills are wasted. The society is deprived of their contributions. Thus, from the Islamic point of view, employees must be given work as agreed in the contract regardless of the category (skilled or unskilled) of work.

#### *Obligation to Put Employees in a Right Job or Situation*

It is the responsibility of employers not to put employees in a job or a situation which is against the law. It is thus illegal to employ someone to drive a truck that is not insured (*Gregory v. Ford & Ors.* [1951] 1 All ER 121). If, however, both the employer and employee know that the work itself is unlawful, both are liable (*Tomlinson v. Dick Evans* [1978] ICR 639; *Davidson v. Pillai* [1979] IRLR 275).

In the same vein, under the Islamic law, an employer is liable if he/she engages an employee in a work that is not permitted by *Shari'ah*, such as manufacturing wine, because the object of the contract is illegal (Mansuri, 2006; <http://www.biicl.org>).

#### *Obligation Not to Put the Employee in a Dangerous Work*

It is an implied term of an employment contract that the employer shall not require employees

to carry out dangerous work or ask employees to work in a dangerous place, especially in modern industry that uses a variety of machines, chemical substances and exposes workers to various hazards. This is a non-delegable duty of the employer. Thus, in *Wilson's & Clyde Coal Co. v. English* [1937] 3 All ER 628, the employer was found liable for the unsafe system of work in the mine, even though he has delegated that duty to his agent. Of course, in *Bouzourou v The Ottoman Bank* [1930] AC 30, the Judge held that the threat of harm must be immediate.

Human life is precious in the sight of the Creator as He has created men and *jinn* only for His worship (Qur'an, 51: 56). Taking life, except for justice, has therefore been prohibited in Islam (Qur'an, 6: 151; 5: 32). Based on this principle, it may be argued that putting employees or workers in a dangerous or life-threatening situation is not allowed in Islam. Rather, according to a *Hadith* of the Prophet, workers are like brothers of the employer. The latter should not even burden the former with work that the former cannot do. The latter is ordered to help the former in the work (Al-Bukhari). By tying employer and employee in a brotherly relation the *Hadith* indicates that the employer should provide a work environment, which is safe, healthy and enjoyable, to the employees (Zahid, 2010).

#### *Obligation to Pay*

The duty to pay wages is an implied term of a service contract, although nowadays it has been enacted in the statutes within a stipulated time/period of time, such as in Malaysia the *Employment Act 1955* requires wages to be paid not later than the seventh day of the ensuing month.

On the other hand, the Prophet of Islam orders Muslims to "feed him (employee) out of what he himself eats, clothes him (employee) like he himself puts on" (Al-Bukhari). If the instruction in this *Hadith* is taken literally, it would be difficult to implement particularly in the corporate world. No employer, specifically when it is a big corporation, may share the same

foods and clothes with the employees. Rather, it would be correct to take a pragmatic meaning of the *Hadith* that the employer should pay the employees in such a way that the needs of the latter are fulfilled according to their social status in the same way as their own. In other words, the salary scale should be determined in such a way that employees can meet their needs. In this respect, the Prophet also instructs his followers to fix the wages of a worker before employing him/her (Chaudhry, from <http://www.muslimtents.com>). He orders Muslim employers to make immediate payment of the wages by saying, "pay the labourer his wages before his sweat dries" (Ibn Majah). Thus, the common law or statutory law requirement may be said to be at par with this provision.

#### *Mutual Confidence and Trust*

It is required of an employer that he/she must not "without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee" (Clyde & Co, 2007). This duty is equally applicable to an employee as well. *Scally v Southern Health and Social Services Board* [1992] 1 AC 294 is the first case that recognizes this duty. In this case, the plaintiff Scally had sued his employer for breach of contract in failing to adequately inform him about the availability of a contingent right, introduced by a statute, which enabled him to purchase added years of pensionable service at advantages rates. The Court held that it was not "merely reasonable, but necessary, in the circumstances postulated, to imply an obligation on the employer to take reasonable steps to bring the term of the contract in question to the employee's attention, so that he may be in a position to enjoy its benefits." In another landmark case, *Malik v BCCI* [1998] AC 20, Malik and Mahmud worked for the BCCI. BCCI went insolvent due to massive fraud, connection with terrorists, money-laundering, extortion and a raft of other criminal activities on a global scale. Malik and Mahmud had both

lost their jobs, and they tried to seek employment elsewhere but failed. They sued the company for their loss of job prospects, alleging that their failure to secure new jobs was due to the reputational damage they had suffered from working with BCCI. Nobody, they claimed, wanted to hire people from a company that had been involved in massive fraud operations. This raised the question of what duty the company had owed to its employees that had been broken. Although there was no express term in their contracts, Malik and Mahmud argued there was an implied term in their employment contract. The House of Lords unanimously held that the term of mutual trust and confidence would be implied into the contract as a necessary incident of the employment relation.

In this context, Prophet Muhammad says, among others, “Beware, everyone of you is a shepherd and everyone is answerable with regard to his flock” (Muslim). According to this *Hadith*, the employer may be taken as a “shepherd” (master) and the employee as the “flock” (subordinate). By the employment contract, they enter into a relationship owing a trust to each other. Hence, the employer should not do anything that may hamper the rights or privileges of the employee. At the same time, the employee should carry out his/her responsibility properly so that the employer does not suffer any loss or injury. Everyone is under the constant surveillance of Allah, with the responsibility of fulfilling the trust which each of them has taken upon himself/herself. Thus, a mutual confidence and trust-based relation between the employer and employee under common law is in consonance with the Islamic counterpart.

### CONCLUSION

Basically, CSR is all about corporate responsibility to the stakeholders, such as creditors, employees, consumers, etc, beyond mere maximization of profits. It is a secular concept, but it still blends with the Islamic *Shari'ah* in general. In particular, the common law obligations of the employer are very similar to the Islamic law principles. The one main

difference between them, however, is that common law does not require the employer to provide work to the employees in all cases. Only in special type of employment, such as skilled worker cases, it enjoins providing work, lest the society will be deprived of their contributions. Islam does not accept this partial view. Instead, Islam provides that for the welfare of the society, every employee or worker should be provided with a job to do. Mere payment of salary/wages without assigning any work may create social problems like gambling. Plus, the society will be devoid of their services. Besides, an overall divergence between the common law and the Islamic law is traced in the fact that common law looks at the issues from temporal view, whereas Islam takes it as a holistic view - temporal and perpetual (afterlife). Thus, common law maintains that the employer and employee are bound to a relationship of mutual confidence and trust for the mundane benefit of the employee and vice versa. On the other hand, Islam believes in the same principles, but its vision goes beyond worldly convenience. By providing for accountability to Allah, it ties the matter to the life hereafter as well as the temporal life (Zahid, 2009, 2010).

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