



SIGNIFICANCE OF CORPORATE SOCIAL RESPONSIBILITY IN THE CONTEXT OF ENVIRONMENTAL JUSTICE

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Abstract :

Every person on this planet has an equal right to enjoy the natural resources gifted by Mother Nature to all of us. Initially these resources were made use of in a manner which ensured social justice. But as the world progressed, businesses entered the fray which laid the foundation for social and economical injustice. The greed of more profit led to the extreme exploitation of resources. With the passage of time the inequalities in the society have widened up leading to degradation of social and moral values. These business giants exploited the resources and little did they think about adverse effects of their operations. Returning something back to the society never struck their mind. Due to which, a Legal duty was imposed on all such companies by the state which if failed to fulfil, these companies will be imposed by a Sanction. This principle in Corporate world is called as “Corporate Social Responsibility” (hereinafter referred to as CSR). This paper examines the need of CSR particularly in the context of Environmental Justice in the light of theories propounded by various Jurists such as Savigny, Salmond, Aristotle, HLA Hart, John Rawls, J. Locke etc. Along with India, few other countries which have witnessed a rapid rise of corporate sector and implied exploitation of resources have been listed and discussed in this paper.

Keywords: Social Responsibility, CSR etc.

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Introduction :

During the dawn of Corporate Boom, certain companies had a virtuous intention to indemnify the depletion of natural resources caused because of excess consumption for the purpose of their business. At the early stage, there were a handful of companies but as the time passed, the number increased rigorously and not everyone thought of the indemnification. Therefore, owing to the extreme exploitation of resources by huge corporates, the concept of Corporate Social Responsibility was made mandatory under Section 135 of Companies Act 2013.

As soon as a Company is formed, it gets a status of a Corporate Personality. It is then considered as a legal entity and a separate Artificial person. Keeping Savigny’s contribution to Jurisprudence, a company when treated as a person enjoys all the rights that a natural person has and has to fulfil all the obligations/duties conferred on them by the State/Sovereign¹. Salmond said that wherever there is a right, there also exists a Correlative duty².



In this scenario, rights are which the company enjoys while using Natural Resources and CSR then becomes a Correlative duty. Now, as soon as CSR¹² was made a mandatory thing, the Moral Duty of the company has been given a shape of Legal Duty which may also be called as a “Legal Burden”.

Now, there is some contradiction when we relate CSR with Salmond’s theory. Article 19 of the Indian constitution guarantees Freedom of Trade³. But, because CSR being imposed as a Legal Obligation, further listing out of the activities for which the CSR wealth is to be used, and an extremely high expectation to use the resources sustainably, the rights get contravened. Moving on to the Part IV of Indian Constitution which speaks about Directive Principles of State Policy, these say that Wealth should not be concentrated and there should be distribution of the same. Therefore, even though the company is been given a status of a person, it has been given all the rights which a natural person enjoys but the company surely has an extra mile to travel. It has been asked to fulfil greater duties. The theory which said that just a Correlative duty exists and not an absolute duty, which was given by Salmond is being contradicted here.

1. CSR in light of Libertarian Approach

Mere existence of a creature and giving him/her no rights is just like putting a fish into the water and contaminating the same with fatal poison. A person along with his/her existence, should have Rights, Freedom and above all, The Liberty to exercise the same. Similarly, if the state allows the company’s existence and if companies are not allowed to carry out their functions independently, there will be no sense of Individualism. This concept in entirety is called as Libertarianism.⁴

“Natural Resources on Earth belong to everyone on Earth” believed the Libertarians of left wing. “The proportionate division of the resources available should be *enough and as good* for all” believed the left-wing libertarians (P. Vallentyne, David Ellerman etc) They also believed that if someone fails to meet this obligation, they must be Taxed by the society in order to compensate.

John Locke (also known as the Father of Libertarianism) initiated the idea of Libertarianism. His writings were the foundation stones for ideas of Adam Smith, D. Ricardo, J. S. Mill. This basically means the minimum intervention of the Government in the day to day business activities of private individuals. The same implies on the companies which gain a separate legal personality. They should definitely enjoy freedom.

But, should this liberty be absolute? If yes, wouldn’t it be a . threat to the current peace prevailing in the society? In this case, **Neo Libertarianism** comes into the picture

James Sterba described Neo Libertarianism for the first time⁵. A commitment being moral in nature, towards liberty which can be misused, in hands with regulating principles to restrict liberty and reaching on to a unanimous conclusion keeping particular interests of each and everyone. **Sterba** was of the opinion that there should be a shield to defend society from theft, fraud and prevent it from prejudicial effects. He also stated that it is impossible to guarantee complete liberty to Everyone in the society.

Companies Act, 2013 can be termed as a modern day Sterba. Specially for the companies which exploit a lot of resources with a view to maximize their profit.

2. Legal Framework for CSR in India

CSR in its entirety focuses merely on the businesses which are huge. These are the businesses which are the major contributors for the development of the society at a pace that today’s globalization actually requires. The fact that these big corporate giants use a lot of resources remains undisputed. But if someone is of the thought that it is only these businesses that use the resources, he/she would be highly mistaken. A large amount of resources are also used by the small and medium enterprises. A

¹<https://www.britannica.com/biography/Friedrich-Karl-von-Savigny>

²Sweet and Maxwell’s “Salmond on Jurisprudence” – South Asian Edition

³<https://legislative.gov.in/constitution-of-india>

⁴<https://plato.stanford.edu/entries/libertarianism/>

⁵Sterba, James P. (1978). Neo-Libertarianism. American Philosophical Quarterly 15 (2):115 - 121.



business entity, be it of any size, has a moral obligation of giving back to the society in which it operates.

As per H.L.A.'s Hart concept of law, Rules of obligation are highly distinguishable from the rules other than it. They are definitely supported by some great social pressure only because they are felt to be necessary to maintain society". For Hart, 'law' is equivalent to 'legal system'⁶. Law can be regarded as a system which comprises of primary as well as secondary rules. These rules can be understood in two social senses: firstly, the way in which they regulate the conduct of people in the society which is to say that they are the guiding principles of human and social conduct; secondly, in as much as they derive from human social practices.

Besides these, social rules, some other rules which can be considered as moral rules. The working of abovementioned two rules in unison is summary of his concept of law. CSR can be understood as a social rule as there is a moral obligation on the part of the business entities as they use up a number of natural resources for their activities and maximization of wealth and so in turn they need to ensure the sustainability of the environment for the future generations as well as assisting the society to progress in all spheres.

The CSR law in India specifically provides a list as to which activities would be considered as a CSR activity and in a way the companies are bound to carry out those activities and fulfil their obligations. Similarly, secondary rules are rules which give power. Such power can be private or public. Primary rules on a different side are basically concerned with the actions (an individual should do or should not do)

The secondary rules are ancillary to and are concerned with the primary rules themselves. That is to say, the secondary rules specify the way in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined. Secondary rules are chiefly procedural and remedial, and embrace not only the rules governing sanctions but also go far beyond them. Furthermore, these rules also extend to the rules of judicial procedure, evidence and the rules governing the procedure for new legislation. For effective implementation of CSR projects, the companies are subjected to a penalty of ₹ 50,000 to ₹ 25 lakh in case of non-compliance⁷. These penal provisions more or less work as a sanction which Hart has criticized through his gunman theory. As Hart has mentioned in his theory that secondary rules go well beyond than just imposing a sanction, the impact assessment under CSR works on similar grounds.

As a matter of fact, more emphasis should be laid upon the impact assessment of the CSR projects. The Companies Act, with a CSR obligation of ₹10 crore /more in the preceding³ financial years. The CSR Impact Assessment Study of respective projects through independent agencies in case the of value of project goes above ₹1 crore. However, it is imperative that all the CSR projects should be subjected to an impact assessment⁸ because it is only and only then that we can ensure that the activities are indeed the one that ensure the sustainability of resources and which do justice to the society.

3. John Rawl's theory of Justice

Speaking too much about liberty was something which made Rawls to argue upon its Reconciliation with equality. He belongs to the social contract tradition, but he has a different view from that of earlier thinkers. Rawls to be very specific, develops principles of justice using an artificial device "Original Position". Rawls discusses very exhaustively about principles of justice throughout his book⁹. In chapter forty-six, Rawls makes his final clarification on the two principles of justice:

1. "Each and every person shall have an equal right to most extensive total system of equal basic liberties compatible with a similar system of liberty for all"
2. "Social and economic inequalities are to be arranged so that they are both:
 - (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
 - (b) attached to offices and positions open to all under conditions of fair equality of opportunity."

⁶<https://plato.stanford.edu/entries/legal-obligation/>

⁷<https://www.mca.gov.in/>

⁸<https://samhita.org/impact-assessment-faqs/>

⁹Theory of Justice

The first principle is often called the greatest equal liberty principle. Part (a) of the second principle is referred to as the difference principle while part (b) is referred to as the equal opportunity principle.

Rawls has ordered the principles of justice as follows¹⁰

- 1) The greatest equal liberty principle.
- 2) Equal opportunity principle.
- 3) Difference principle.

In our subject, firstly, the corporate body enjoys the greatest equal liberty. First Principle. Secondly, the state has imposed on them a duty to indemnify the Exploitation they did. Greatest opportunity for the least advantageous.

4. Aristotle's Theory of Justice

*"Justice consists in what is lawful and fair, with fairness involving equitable distributions and the correction of what is inequitable."*¹¹

Aristotle in his theory of justice, divides the same into two parts:

- 1) Complete Justice (also called as General/Universal Justice)
- 2) Partial (also called as Particular Justice)

The laws should be obeyed because the laws in a particular state are thought of being for the welfare of the entire society and that is why it is called as - Complete/ Universal Justice.

But, not every theoretical concept is applied practically in the society. There are some laws considered to be civil in nature, that are unfair for some. Some examples are as follows:

- 1) Members of Parliament cannot be sued for the remarks they make in the Parliament.
- 2) Reservations in certain sectors.¹²

The examples above state that these are some instances where the justice is done just for some Particular group of people. Hence this is called as - Particular Justice.

Particular Justice has also been divided in two further parts.

- 1) Distributive Justice
- 2) Remedial or Corrective justice.

5. CSR and Distributive Justice as propounded by Aristotle

A Fair division of benefits among the members of the community is the basic understanding of Distributive Justice. Aristotle said that this is the most powerful form of justice. Now this phenomenon is directly connected to our subject in a way that the Natural Resources belong to everyone in the society. Corporates can use it for the Nationwide development but not at the cost of future generations being deprived of the quantity/quality of natural resources.

6. CSR policies in different countries

We have listed above a lot of connections between Jurisprudence and CSR of Indian companies. Following is a rough overview CSR in some other nations.

The driving principles of CSR are to assure greater accountability and achieve better management for all stakeholders. The larger aim is to ensure community good and for that very purpose it is inclined towards transparency and ethics. The main focus areas vary according to the history, policies and laws

¹⁰Ratnapala, Suri. (2017). *Jurisprudence*. Cambridge, United Kingdom ; New York, NY, USA : Cambridge University Press

¹¹<https://is.cuni.cz/studium/predmety/index.php?do=download&did=104852&kod=JPM327>

¹²<https://legislative.gov.in/constitution-of-india>

prevalent in the respective countries but ensuring environmental sustainability is the underlying objective of all the activities. The implementation of CSR is also affected by the active or passive role being performed by the government.

7. Norway

In Norway the Hague movement was something which influenced the style of business in the early 19th century. The movement brought up the idea that businesses should be carried on keeping the greater objective in mind which is serving the God. This principle could be found in the fact that providing just treatment to the employees was an integral part of the movement. The CSR policy in Norway is till date largely influenced by this movement. CSR is firmly embedded in the working culture of Norway as the state is predominantly characterized by businesses run by big corporations. The ideology is such that the business houses should voluntarily contribute towards the society in which it functions, which may be done without attaching the tag of CSR. The culture which is being followed in Norway showcases strong egalitarian values and also ensures welfare which strengthens societal relations. Owing to the ethical work culture of Norway, inspite absence of a legal provision the business houses and even the small businesses have taken a step by themselves to inculcate the concept of CSR in their operations. The small businesses closely observe the effect of their products and lay emphasis upon the relationship with the stakeholders. The giant business houses account for less than 1% of the market which is why the role of these small businesses becomes so important. It is the moral values and the Norwegian culture that ensure effective implementation of CSR instead of any legal obligations.¹³ Egalitarianism is the ideology that all people are fundamentally equal. Every person in the society should be given equal treatment and everyone should have equal opportunities and access in the society irrespective of their race, gender or religion. Rawls also had an egalitarian goal in his mind in 'A theory of Justice'. His egalitarian theory of social justice is justified in the light of CSR as it propounds equality in respect of claims to primary goods from one generation to the next. The philosophy on which the CSR model is based in the U.S is that the corporations have a moral duty to give back to the society in which it operates as it only because of public assent that the corporations are functioning in a smooth manner¹⁴. It is believed that the businesses are subjected to certain three duties to foster the relations with the society. Firstly, the business consumes the resources available in the society and hence it is their duty to provide employment and aid in the economic development of the country. No business could ever survive by operating in manner which is unjust and therefore the second duty is to run the business on fair and honest principles. Third duty is an implied one which states that the corporations should strive to improve the society in which it operates with a larger aim of securing the greater good of the community. As observed in Norway, the idea of CSR in the U.S is based on similar grounds which is the voluntary involvement of the corporations for the betterment of the society.¹⁵

8. United States

The philosophy on which the CSR model is based in the U.S is that the businesses are able to operate because of public consent, therefore they owe a duty to constructively serve the society¹⁶. There are three duties appended to the corporations as per the social contract. First, to supply jobs and promote economic growth through businesses. Second, the business should be run fairly and honestly to the employees. Third and most important, businesses should involve themselves in bettering the community and environment in the vicinity of their operations. Characterizing feature of US CSR policy is its voluntariness in societal engagement notwithstanding absence of legislation mandating it. The stated voluntariness in CSR activities has compelled scholars to view corporations as citizens which are to help other citizens.¹⁷

¹³Idowu SO, Schmidpeter R, Fifka MS, editors. *Corporate Social Responsibility in Europe*. 1st ed. Springer.

¹⁴The CSR Journal. *A Brief History of Corporate Social Responsibility in the US*. 2019.

¹⁵Cecil L. *Corporate social responsibility reporting in the United States*. *McNair Scholars Research Journal*. 2008

¹⁶The CSR Journal. *A Brief History of Corporate Social Responsibility in the US*. 2019.

¹⁷Cecil L. *Corporate social responsibility reporting in the United States*. *McNair Scholars Research Journal*. 2008



CONCLUSION

Throughout our research, we found that a lot of Jurists have covered almost all of “then-future aspects” under the blanket of various theories propounded by them. Just like the Salmond’s theory of Correlative duty can be considered as a Legal Burden created by the state on corporations in the manner of Corporate Social Responsibility. Aristotle’s Distributive theory intersects with the CSR policies very precisely. Also, after looking at the companies like Reliance, Tata and their rapid infrastructural requirements, we can guess the pace at which the natural resources might be depleting. The need to implement laws in a way which ensures justice in every sense has been propounded long ago by various jurists in their works and is relevant in the context of CSR as well. Effective implementation does not necessarily flow from sanctions but from the moral and ethical values. The current framework is not necessarily a one which provides for a sustainable progress but is perceived to be a law which has to be complied with in order to avoid sanctions as Hart had mentioned in his Gunman theory. Creation of social justice, proper distribution of resources is what should be the focal point of the law as has been rightly propounded by John Rawls.