CHAPTER –II

CONCEPT AND NATURE OF CORPORATE SOCIAL RESPONSIBILITY

Philosophical Background and Historical Evolution in Different Phases
2.1 Introduction

Corporate social responsibility is basically a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment. Corporate social responsibility is represented by the contributions undertaken by companies to society through its business activities and its social investment. This is also to connect the concept of sustainable development to the company’s level. Over the last years an increasing number of companies worldwide started promoting their Corporate Social Responsibility strategies because the customers, the public and the investors expect them to act sustainable as well as responsible. In most cases CSR is a result of a variety of social, environmental and economic pressures.

The term Corporate Social Responsibility is imprecise and its application differs. CSR can not only refer to the compliance of human right standards, labor and social security arrangements, but also to the fight against climate change, sustainable management of natural resources and consumer protection.¹

The concept of Corporate Social Responsibility was first mentioned in 1953 in the publication ‘Social Responsibilities of the Businessman’ by William J. Bowen. However, the term CSR became only popular in the 1990’s, when the German Betapharm, a generic pharmaceutical company decided to implement CSR. The generic market is characterized by an interchangeability of products. In 1997 a halt in sales growth led the company to

the realization that in the generic drugs market companies could not differentiate on price or quality. This was the preclude for the company to adopt CSR as an expression of the company’s values and as a part of its corporate strategies. By using strategic and social commitment for families with chronically ill children, Betapharm took a strategic advantage.²

2.2 Nature of Corporate Social Responsibility

CSR means different things to different people. One end of the spectrum is compliance with laws, and the other extreme is pure philanthropy and more than that. Another way of looking at it is who benefits? The beneficiaries range from employees to suppliers to customers to that amorphous entity known as the “community”. Complying with the law is the basic minimum condition to legitimately stay in business. CSR is going beyond that and beyond the discharge of contractual obligations, such as those to employees, shareholders, etc, to focusing also on the most disadvantaged in society. We can also say that CSR is not just the function of doing good but also that of not doing bad.

Philanthropy is doing something without expecting anything in return. CSR includes this notion, but with the added version that it legitimizes the seeking of a business benefit while fulfilling a corporate’s responsibility to the society from which it springs and within which it functions and perhaps flourishes.³

Corporate Social Responsibility has never been so important than in the present context when the role of the government is transforming from “governing businesses” to “business of governance”. Business does not grow in a vacuum; they grow in a prosperous, healthy, social environment. Nowadays, Companies are realizing that it is in

² Id. p. 2.
their business interest to do the right thing everywhere they operate. Indian firms are keenly aware that their long-term investment goals can only be achieved within a stable, healthy environment that is free of social and financial constraints. But companies alone cannot solve the challenges associated with social responsibility. They must work with governments, civil society groups, development institutions, and citizens.\textsuperscript{4}

Societies do not actively convince companies to be socially responsible. They do not need to do so. Most companies realize it themselves, either through experience or by seeing others. The industry associations are active. And there is this great Indian philanthropic tradition. However, what is really necessary is the need to be strategic and less ad hoc. There is a great interest in CSR among companies in India who have realized its benefits, but the gap between intent and practice is huge. It is believed that most senior company executives understand the importance of being socially responsible at an intellectual level, but few have the vision or the space to break the long habit of looking at the immediate rather than the long term, so CSR is still a fair-weather friend and the first to get jettisoned when times are bad. It is at such times that non-monetary form of involvement thrives, that is why it is preferred to donate and forget. Since the corporate sector now controls so much of the earth’s resources and because it intervenes in so many areas of social life, corporate entities must balance their right to grow with their responsibilities to society and to the environment. Because the financial capital market and business corporation are created by society, they must, therefore, serve it, not merely profit from it.\textsuperscript{5}

\textsuperscript{4} Id, p. 48-49.
\textsuperscript{5} Id, p. 49.
Corporate social responsibility can be specifically proposed for three groups: the private sector, civil society (the people), and the public sector. Certain standards are set for promoting this idea and seeing that these ideas are fairly implemented. These standards tend to vary according to the type of firm for which these are proposed. What follows is a general description of the main feature of the standard of the firm for which these are proposed.\(^6\)

Social responsibility is not a philosophy. It is a goal. This goal is accepted by business in response to demands of the society for improved standard of living. Keeping this goal in view, a definition of corporate social responsibility is advanced. According to it, a socially responsible company should be a good employer and it should take interest in public affairs with company funds.\(^7\)

In 1965, Social responsibility of companies was defined as responsibility to consumers, workers, shareholders, and the community. Then, the Gandhian concept of trusteeship was co-related with social responsibility of business. Company must be accountable to public, and be trustee for public because with so much public amount and with so many lakhs of employees, the company can no longer be accepted as a private domain, the working of which would be of no concern to the society.\(^8\)

Two basic principles of corporate social responsibilities are: 1. corporate power should be used for social good. 2. Corporate powers should not be used to cause social harm. The first principle above pertains to problems of society itself. Therefore, area of positive social responsibility is concerned with what an institution can do for society.

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\(^6\) Id, p.49.
second principle relates to social impacts of company. Therefore, area of negative social responsibility is concerned with company’s responsibility for its social impacts.\(^9\)

If corporate power is to be used for social good, and then company’s new responsibilities are towards shareholders, workers, consumers, environment surrounding company, and the state. This responsibility can be attributed to those in control of corporate affairs.

Some of the acknowledged social responsibilities of company are to:

1. Raise wages.
2. Reduce working hours- reduce drudgery.
4. Providing housing, health and recreational facilities for worker’s families.
5. Take active and continuous interest in the education, health and general welfare of workers’ families.

Consumer satisfaction is the aim of all economic activity. This involves:

1. Offer of product at the lowest possible price.
2. Goods should not be adulterated.
3. Fair measure.
4. Service and courtesy.
5. Advertising should not be misleading and/or dishonest.
6. Free competition and absence of monopoly.

Two concepts can help to define other aspect of positive social responsibility of company. There are concepts of: 1. Neighborhood, 2. Welfare Company. Company

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should act as a welfare company to its neighborhood. As the socialization of political power of the state transformed it into welfare state, so the socialization of economic power of company should transform it into Welfare Company. The larger the size, the larger the neighborhood, should be the principle. Company should be responsible to tackle social problems of its neighborhood.\(^{10}\)

Closely connected with the concepts of Welfare Company to its neighborhood is concept of public interest. It comprehends wide variety of matters. It includes some aspects of interests of consumers, creditors, workers, and shareholders. It also includes environmental protection, the location of industry, regional planning, control of monopoly and restrictive trade practices, export promotion, price control, wages or dividends.\(^{11}\)

Some limits of social responsibility are,

1. Higher responsibility of a company is for the specific performance for which it is created. In order to “do good”, a company must first “do well”. Performance of its function is the institutions’ first social responsibility. Unless it discharges its performance responsibly, it cannot discharge anything else. If a company assumes social responsibilities disregarding the economic performance, it will soon get into trouble.

2. The limit of competence: A company should not assume a social responsibility if it has no competence to do so or if company’s value system is contrary to such responsibility. That is, a company should not perform a task not falling into its value-system.

\(^{10}\) India International Centre, “Social Responsibility of Business”, (Manakalas, Bombay, 1966), at p. 25.
\(^{11}\) Supra, note 7, p, 160.
3. The limit of authority: To assume a social responsibility always means to claim authority. Company must ask, whether the authority implied in the responsibility is legitimate? If not, it is usurpation and irresponsible. It is lust for power.\(^\text{12}\)

These limits are not applicable to negative social responsibility of a company.

Company is an organization of property. Creation, working and dissolution of this organization is governed by company law.\(^\text{13}\) Manner of organization of property affects balance of power which makes up the life of an era. When property is organized in company – form, its power balance and resultant quality of life of people connected and affected by it will be its very own. Policy of company law must be to aim at creating a corporate organization capable of striking socially responsible balance of power. Socially responsible balance of power is the one which results in the best quality of life for people connected or affected by company.\(^\text{14}\)

Absolute power is useful in building an organization, but sure is the development of social pressure demanding that the power shall be used for benefit of all concerned. Result of this growing social pressure for public benefit is evident. Legal theory of shareholders owning the corporate undertaking is being increasingly replaced by the concept of the company as a responsible social organization, owing responsibilities not only to the shareholders, but to community at large, employees, creditors, customers and to the State.

\(^{12}\) Supra note 8, p. 343.
\(^{13}\) The Companies Act, 1956.
This change is visible in attitude of Indian judiciary. Bhagwati, J\textsuperscript{15} is of the view that acceptance of the idea, even in predominantly capitalist countries; that a company is not property has gained ground. The traditional view that the company is the property of the shareholders is now an exploded myth. Further, a company according to the new socio-economic thinking is a social institution having duties and responsibilities towards the community in which it functions. Bhagwati, J. is of the opinion that maximization of social welfare should be the legitimate goal of a company. Shareholders should be regarded not as proprietors of the company, but merely as suppliers of capital entitled to no more than reasonable returns. Company should not only be responsible to shareholders but also to workers, consumers and the other members of the community and should be guided by consideration of national economy and progress.\textsuperscript{16}

The changing parameters can create social pressure. Company does change social patterns. This change has affected public consensus. Emerging public consensus can be seen in the form of emerging concept of corporate social responsibility. Society is demanding company to be socially responsible due to following reasons:

1. Business has succeeded. Society looks up to a successful person. Therefore society is looking up to solve its problems and to help it.

2. Another reason for societal demand is disenchantment with Government. Society is disenchanted with government, because of the feeling that Government has failed to solve societal problems. Therefore, society is looking up to Company as an alternative parent figure.

\textsuperscript{15} National Textile Workers’ Union v. Ramakrishnan, AIR (1983), SC 75.

\textsuperscript{16} Id, p. 76.
3. Third reason for the demand is emergence of corporate managers as new societal leadership group.\textsuperscript{17}

2.3 Arguments for social responsibilities of companies

Following are arguments for social responsibilities of companies:

1. Public needs have changed leading to different expectations. Because company receives its charter from society, it has to respond to the needs of society.\textsuperscript{18}

2. The creation of a better social environment benefits both society and company. Society gains through better neighborhoods and employment opportunities. Company benefits from a better community which is the source of its labor and where it sells its products and services.

3. Social involvement discourages additional governmental regulations and intervention. The result is greater freedom and more flexibility in decision making for business.

4. Company has a great deal of power which, it is reasoned, should be accompanied by an equal amount of responsibility. Mahatma Gandhi felt that all life is trust, therefore, all power carries obligation with it.\textsuperscript{19}

5. Modern society is an independent system and internal activities of company have an impact on the external environment.

6. Social involvement may be in the interest of shareholders; as they are unable and indifferent to check corporate management.

\textsuperscript{17} XI Chartered Secretary (1981), p 957.
\textsuperscript{18} Companies Act, 1956.
\textsuperscript{19} Supra, note 9, p, 25.
7. Social involvement creates a favorable public image. Thus, a company may attract customers, employees and investors.

8. It is better to prevent social problems through company’s social involvement than to cure them. For example it may be more effective to help the hard core unemployed ones than to cope with social unrest.20

2.4 Gandhiji’s ideas on trusteeship and social responsibilities of companies21

Gandhiji’s ideas on trusteeship in the context of social responsibilities of companies are worth considering:

1. Gandhiji wanted companies to be replaced by trusteeship.

2. He wanted no private ownership except as much as socially permitted.

3. Wealth can be legislated upon.

4. Wealth shall not be used for selfish satisfaction or in disregard of interest of society.

5. There should be a limit on maximum income.

6. Company’s production should be according to social necessity.

Above ideas are germane with concept of social responsibilities of companies. These ideas can be used by law makers to implement corporate social responsibility.22

2.4.1 Four propositions of Gandhian concept of trusteeship

Law-makers also may consider following four propositions of Gandhian concept of trusteeship to implement corporate social responsibility:

1. Man’s needs are limited.

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21 India International Centre,” Social Responsibilities of Business”, p 156.
22 Such ideas are already available in the Part IV of the Constitution of India, particularly in its Articles 39(b) & (c).
2. There is a limit to what truly belongs to a man.

3. All things have true and false function.

4. True function is indicated by the end it serves.23

Though company is not a citizen, yet it is a legal person. Therefore, it can be reasonably expected that company should behave like a responsible citizen; it should not damage amenities of the community.24 This is the negative aspect of social responsibility of company. Basic reason of negative social responsibility of company is its responsibility to manage its impacts. This responsibility emerges out of social impact of company.25 Impacts are inevitable while discharging a job in a society. To discharge its job, to produce economic goods and services, company has to have impact on the community as a neighbor, as a source of jobs and tax revenues; but also of waste and pollutants’ producer. Managing these and many other social impacts are necessary for company. Because company is an organ of society and organ cannot outlive the body which it serves.26

One is responsible for one’s impacts, whether they are intended or not. Management is responsible for the social impacts, of its company. Impacts are management’s business. Because one is responsible for one’s impacts, either eliminates or minimizes them. Company is responsible to do it.27 Impacts are never beneficial, they are either nuisance or deleterious. They always carry, within themselves, a cost, a threat. Impacts use up resources, burn up or waste raw materials, or at the least tie up

23 Supra note 20, p. 158.
25 Supra note 8, p. 326.
26 Id. p. 325
27 Id. p. 327
management efforts. Yet they add nothing to the value of the product, or to the consumer’s satisfaction. They are “friction”, that is non-productive cost.

Sooner or later society will come to regard any such impact as an attack on its integrity and will exact a high price from those who have irresponsibly worked on eliminating the impact or on finding a solution to the problem. Therefore, management of company cannot afford to be indifferent to impacts of its company. Company law must make company managers address themselves and manage impacts of economic power of their company. These impacts are on two levels:

1. **Internal level:** Where it relates to individuals within the organization. It is chiefly exercised in its capacity to employ or discharge and to determine conditions of employment.

2. **External level:** At this level corporate power can be exercised in six ways:

   a. To determine when, where and how to use power. Its effect can be capacity to build new cities or withdraw from old ones.

   b. To buy services, supplies or raw material affecting primarily individuals who live by selling it, contact with it or otherwise serve it.

   c. To determine product. This power grows in importance as technique opens new possibilities.

   d. To fix and administer prices, to induce consumption and sale through advertising and to form new capital.

   e. To give or withhold dividends – to determine whether and to what extent its profit shall be distributed and to what extent these profits shall be dedicated to capital formation.

   [28 Supra note 8, p. 315.]
(f) To give charity.

Economic power on all these above levels can be misused. For example, if misused at the internal level, it may result in disgruntled workers and hazardous working conditions. If it is misused at the external level, it may result into congested and polluted cities, exploited suppliers, harassed customers, substandard products jeopardizing customer’s health or safety, investor without adequate or no returns and a community without getting any charitable help from company when it needs such help the most.29

Any use of economic power that is unethical results into its misuse. In Webster’s New Collegiate Dictionary, ethic is defined as “the discipline dealing with what is good and bad and with moral duty and obligations”. The first ethical responsibility of a professional was spelled out clearly, 2500 yearly ago, in the Hippocratic Oath of the Greek physician, “premium non nocere” – above all, not knowingly to do harm. No professional can promise to do good for his client. All he can do is trying. But he can promise that he will not knowingly do harm. And client must be able to trust the professional to not knowingly do him harm.30 Company law must make above obligation, of not knowingly doing harm, mandatory on companies through its managers.

Four areas of violation of the rule, not knowingly to do harm, are –

1. When company fails to think through and work for the appropriate solution to an impact of its business, knowingly does harm.

2. When company practices unjust inequality of income between the lowest paid and the people in charge.

29 Supra note 13, p. 55
30 Supra note 8, p. 368.
3. When company uses “golden fetters” for its employees or workers. Retirement benefits, extra compensations, bonus and stock options to tie or ease out them. Because when such fetters are used, generally non-performers or based performers often stay.

4. When company uses rhetoric of profit motive. Motive is necessary for company, but it is not its sole goal.\(^{31}\)

As company has got power to choose course of its action; choosing a course known to be not advancing public cause is socially irresponsible, as it is unethical and is against the principle of not knowingly to do harm. Because a course that does not advance public good shall either be socially harmful or socially unproductive. A socially unproductive course is socially wasteful and so socially harmful. Therefore, criterion for registration of company should be a course advancing public cause.

### 2.5 Positive aspect of social responsibility of company

Company does not exist by itself and is not an end to it. It is an organ of society. It exists for sake of society. Free enterprise cannot be justified as being good for company. Company can be justified only as being good for society. Government has failed to be the “guardian of the common good” in a pluralist society of organization. Therefore, leadership groups in this society, that is managers of key institution – including companies – whether they like it or not, have to think through what responsibilities they can and should assume, in what area, and for what object.\(^ {32}\)

Managers are the only leadership group for society to look upon. Therefore, society is over confident in managers to fulfill positive social responsibility. This is true of

\(^{31}\) *Id*, p. 370.

\(^{32}\) *Supra* note 8, p. 3
company managers, and so of companies. Since company can exist only within social environment, as a societal organ, such problems affect the institution. They are of concern to company, even if the community itself sees no problem and resists any attempt to tackle it. A healthy company cannot exist in a sick society. Company has a self interest in a healthy society, even though the cause of society’s sickness is none of company’s making.33

Social problems represents challenge to company. Function of company is to make profit by satisfying a social need. Solving social problems is a social need. So, social problems are major sources of opportunity; if social problems are resolved into a business opportunity. This needs an innovation by company managers. But every social problem cannot be thus profitably solved. But the health of company is management’s responsibility. Prevention is always better than cure.

Traditionally, every company has to justify itself as an economically viable entity. Now it has to justify itself as a socially responsible entity to be judged by various tests dependent upon circumstances in each case. For example, if a chemical company, declaring a very high dividend, causes air and water pollution; the company shall be held socially irresponsible.34 Economic power is justified because it is needed to produce, supply and distribute goods and services and set up attendant conditions of employment and source appropriate to these ends. Therefore company is a need of society. But society cannot allow a need fulfilling institution to exploit it.

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33 Id. p. 337.
Corporate existence is need-based. Company is to generate social wellbeing by satisfying social needs. Therefore, company must be profitable. It must also be profitable to exist. Company will be economically unviable if it is unprofitable. Then it will not be able to fulfill social needs. To exist, company must make profit and to justify its existence in society, it must fulfill societal needs in a socially responsible manner. Company has to balance between private ends of business and its public obligations.\textsuperscript{35} To achieve this balance, company’s purpose should justify existence of its economic power. Purpose should be legitimate one. Power of company should be appropriate to its function; and its function should be legitimate.

Profit is necessary. But it is not the primary purpose. This implies that the claims of various interests will have to be balanced not on the narrow ground of what is best for the shareholder alone, but from the point of view of what is best for the society at large. Company must make profit in socially responsible way.\textsuperscript{36} There is a relation between social and economic performance. There is evidence that, in general, the socially responsive companies enjoy better economic performance.

Company uses societal resources – manpower and raw material. Government also uses these resources. Therefore, company’s role can be compared to Government in this context. This role consists in balancing needs of company and society. The role may include following functions:

1. Starting a company in rural area.

2. Employing socially handicapped and weaker section of community.

\textsuperscript{35} Supra note 13, p. 56.

\textsuperscript{36} Supra note 32, p 96.
3. Taking interest in the area of its work, the welfare of its employees and their families including the spread of adult literacy.

4. Environmental protection.

5. Consumer’s health, welfare and safety.\(^{37}\)

Traditional role of the companies which consisted of generating income, employing people and earn income cannot be unqualified functions because society creates company. Therefore, company only can be for social welfare and economic betterment of society.\(^{38}\) As pointed out earlier, company should make profit only to survive. Beyond that point Company’s endeavor must result into its contribution to general social welfare. Company must be patriotic.\(^{39}\)

Law permits and encourages company to do business. This encouragement and permission is to serve society at large and not only for the sole purpose of profit making. Company must exist to serve life and not to serve economic interest only.\(^{40}\) Traditional goals of company- profit, sales, wealth maximization are not enough. Company should be service motivated and society oriented. Company as the means through which a man has individual and as a member of society finds both contribution and achievement. He achieves as individual and contributes to society as its member. It is function of company to make this possible for an individual working for it in any capacity.

Company is a legal person. Being an unnatural person it needs human agents to act.\(^{41}\) Directors are agents of company. Company acts through directors.\(^{42}\) Therefore,

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\(^{37}\) Id, p. 95.

\(^{38}\) The Companies Act, 1956.


\(^{40}\) S.S. Nahar, ‘Investigation into the affairs of companies”; under the Companies Act, 1956’, 16 Journal of Indian Law Institute, 415


social responsibility of company can only be implemented through its directors and directors as such, must be socially responsible. Social responsibility of their company should be their managerial responsibility, as company delegates its managerial power to its directors through its articles of association. So company directors, as agents and managers of their company, are responsible for social responsibility of their company.43

Company employs resources of society. Its directors, as its managers, are in command of these societal resources. They also command competence employed for their company. Because directors command societal resources and competence, they are expected by society to take up major social issues.44 Public aspect of companies and therefore also that of their directors is that they consciously, knowingly, openly, strive to make a public need into a private opportunity of their autonomous self-governing companies.45 Directors have to serve both; their company and the common good. Company is the means through which a man achieves and contributes to society. Therefore, there is one principle of legitimacy of directors’ authority; to make human strengths productive. Ethics, quality of life and safety are other moral principles of legitimacy directors’ authority.46

Following are the tasks for directors:

1. To make their company perform for society and economy, for the community and for the individual alike. The first task is economic performance.
2. To make work productive and worker achieving.
3. To provide for the quality of life for society and individual.

43 The Companies Act, 1956.
44 Supra note 2, p 319
45 Id. p 54.
46 Kiron Kasbekar, “Are the Board effective?” Business India, March 1983, p. 56.
4. Apart from the above three tasks of directors, their other tasks are:

5. To fulfill multiple social responsibilities of their companies.

6. To reconcile conflicting claims made on their company.

7. To develop and fully utilize human resources than their material.

2.6 Evolution of Corporate liability

The English company law was introduced in India. Therefore, the root of the Indian corporate liability can be traced only in the English soil.\textsuperscript{47} Originally, corporate personality in England was used only for ecclesiastical and public bodies. The corporate form was not meant for private purpose. Later, Royal Charters conferred it on commercial associations. The Charter conferred corporate personality for a limited purpose of conferring monopoly for a particular trade on the commercial association. Each member traded in his own account, so there was no corporate liability. Tudor monarchs were the first to grant such charters in the 16\textsuperscript{th} century. During the 17\textsuperscript{th} century most of such companies started trading on their members’ behalf. The trading was known as “joint stock” trading. By the end of the 17\textsuperscript{th} century, all such companies had established permanent fixed capitals represented by shares freely sealable and transferable. The property with which the companies traded was under the exclusive control of their board of directors. At this time the parliament also started granting incorporations. Though liability was not still corporate, yet such companies could sue outsiders and its own members. Such companies had common seal to distinguish the company’s acts from those of its members.\textsuperscript{48} Because getting incorporation was not generalized and therefore difficult, scarce incorporations were misused. A company

\textsuperscript{47} Gower’s Principles of Modern Company Law, (London: Stevens & Sons, 1979) p 22.
incorporated for one purpose was used for the other one after buying the incorporation. This led to orgy of speculation in the company-shares. The Parliament outlawed the companies themselves by the so-called Bubble Act, in 1720. For a century, development of capital market was held up, but the unincorporated company survived. In 1825, the Parliament declared such companies lawful. These companies vested their property in a trust. The contracts were made in the name of the trustees. In case of default by such a company, a shareholder was liable only up to the share-value. Though such company could not sue in its name at common law, in equity it was allowed.49

During 1825 to 1855, the fiduciary duties of promoters and directors to their companies were established. During the same period the ultra virus rule was established. In 1856, incorporation and limited liability was made compulsory for a trade association having more than twenty members; memorandum’s and article’s registration for incorporation also was introduced them. Later amendments enabled a company to reduce its capital, to alter its objects; imposed liability on promoters and directors for false statements in invitations made to the public to subscribe for their companies’ shares and debentures and introduced the private company which could be incorporated with only two members. In 1908, the law was consolidated. Further consolidation took place in 1948. In India, the first Indian legislation was the Joint Stock Companies Act, 1850 based on the Companies Act 1844 (English). In both the countries, there were simultaneous amendments. In 1908, the English Consolidation Act was passed, on which the Indian Companies Act, 1913 was based.50

After the 2\textsuperscript{nd} World War, many changes took place in England. These changes resulted in the Cohen Committee Report leading to the Companies Act, 1948 in England. In India, the Companies Act, 1956 is modeled after the English Act of 1948. Since then, England has seen more amendments and so has India. But the Indian amendments had been indigenous. The objective underlying the Companies Act, 1956 was to encourage and safeguard private investment in fields which were not earmarked for the public sector and to regulate such investments for the common good, to maintain the confidence of shareholders, and to protect their legitimate interest. The Act also provided for more effective powers to control and supervision over the activities of companies by the Central Government. In 1965, an amendment to the Act was passed; it was a sequel to the report of Commission of Inquiry appointed by the Central Government to inquire into the administration of Dalmia-Jain companies and of the Dephtary-Sastry Committee. The amendment was to make corporate management more responsible to investor. In 1974, the Act was amended to empower the Central Government to control in the name of public interest, various aspects and activities of corporate management and to take care of interests of shareholders and the company as a whole. In 1977 amendment to the Act empowered the Government to exempt companies from their obligations to advertise to invite public-deposits; provided procedural requirements when an annual general meeting is not held in time; increased charity by a company; provided requirement of the Government to inform the parliament any change in the Act for Government companies. In 1985 amendment to the Act removed the ban on companies to make political contribution. The 1988 amendment to the Act recognized company secretaries.\textsuperscript{51}

\textsuperscript{51} Supra note 47, p 23-25.
It can be inferred from the evolution of corporate liability under English law and Indian law, that corporate management was gradually made more and more answerable to the investing public. In the post-independence India, the Central Government was gradually being more and more empowered to control the corporate management to protect the interest of the investors, the company itself and the public interest. The most recent development has been to make the Company Law Board independent and give it more power against corporate misdeeds to protect these interests. During evolution, the concept of corporate liability as separate and distinct from that of the shareholders of the company emerged giving rise to the concept of limited liability of the shareholders. The English concern was to protect shareholders from corporate impact. The same concern was transplanted into the Indian Law. In India, the shareholders’ control over corporate management was gradually increased. The Central Government’s supervision and power over corporate sector was gradually grown to protect shareholders’ interest and public interest. The evolution in England and in India shows that the concern of law has been the investor.  

The inferences that emerge from study of the statutory content of the Act and its evolution first in England and then in India, are— investor protection is the main concern of law under the Act. The law is to make companies responsible towards investors by regulating corporate impact on them. The law under the Act does not provide for regulating corporate impact over societal groups and aspects other than investors.

2.7 CSR from an ancient Indian perspective

From the ancient Indian perspective, social responsibility (now CSR), obligation is expected from the ‘king’ to his subjects (Rig-Veda, 1-8). Vedic literature emphasizes

that the role of the king or the accumulator of wealth to take care of the welfare of the subjects (stakeholders) and in return the king will grow as the sun grows and shines at dawn and after its rise. It is further expressed that whatever is given to the society, it returns getting multiplied several times. The king or the leader and leadership are considered to be the key necessity for the state or organization. The Manusmriti states that when the world was without a king and people ran about in all directions out of fear, the Lord emitted a king in order to guard this entire realm. In modern day business philosophy, promotional and public relations strategy adds value to customer perception of the organization goods and services. Therefore the firm maximizes its ability to create value to the business. CSR can be a source of competitive advantage for organizations. It must be effectively communicated to stakeholders for their appreciation and support. The business benefits arising from the CSR practices would result in credibility for the organization, reduces the risk profile, improves stakeholders relationship which eventually increases efficiency of the firm.\(^{53}\)

CSR practices in the Indian philosophy sits deep-rooted in the concept of dharma or virtue which is to conform to the truth of things. Dharma is the basis of order whether social or moral. The ancient Indian philosophy has also propounded that the law of karma (cause and effect) as the overarching principle of self determination of one’s moral character. This implied that the present nature of an individual’s life (effect) is determined by their antecedent actions (cause). Therefore an individual has the freedom of moral choice in his daily life. Hence, the law of karma emphasized the virtue (dharma) as a key plank for self realization. In the teachings of Bhagavad-Gita, it has been advised that perfect actions lead one to the ‘gateway to liberation (moksha)’. Evidently, the Indian

philosophy on ethics has set objectives beyond this world and pitches itself on virtues that are different from the western model of CSR.\textsuperscript{54}

2.7.1 CSR in the Vedic literature

The Indian philosophical literatures are derived form of the Vedas. The Vedas essentially forms the fundamental basis of human life on earth through complete understanding of the spiritualism-knowledge of God, the soul (atma) and the relationship to the physical universe (prakriti). Rig-Veda specifically states that the cosmic order of the entire universe is governed by physical relationship of man to moral laws and any transgression will be detrimental (cause and effect to cosmic order). Reflecting on this Vedic knowledge, Swami Dayananda classified it into four orders (Rig-Veda 10-09-9). The first order is the transcendal knowledge (Jnana), which is the knowledge of the absolute truth or god. By obedience of his instructions and knowledge of matter (physical qualities and uses of material objects), deviation of the material structure can be avoided. The second-order is action (karma) by which right actions will lead to self-determination and self-realization of both inner self and social order. The third-order worship (upasana), relates to all right measures for the realization of self and God. In the fourth-order, science (vigyan), this is a body of knowledge encompassing Upanishads, Brahman Granthas, Smrities, Puranas and Darshan Shastras. It is clear upon reflection that the ancient Indian philosophy propounds that cosmic order requires absolute balance. Vedic knowledge also explicitly informs that right moral practices will enable and stabilize cosmic order. Cosmic order is realized through an understanding of transcenental knowledge, taking right actions and right measures framed by the sciences of Vedic

philosophy. If mankind disengaged from the knowledge of matter to accumulate material wealth without seeking right actions (ethics and social responsibility) physical detriments will certainly occur (the law of karma). In the quest for business excellence, the fundamental pursuit of a balanced life has often been ignored in the contemporary business world.55

Vedic philosophy further identifies four objectives in human life. These are values or virtue (dharma), money (artha), urges (Kama), and salvation (moksha). There is a systematic relationship of each of these objectives. The ultimate element of life should be interpreted as a drive to achieve moksha or salvation guided by value systems and the urge or motivation to achieve using money (artha) as a form of tool. Sri Krishna in Bhagavad-Gita states that ‘value system protects you if you follow it (Dharmo Rakshathi Rakshitaha)’. Swami Vivekananda in his reflection of Bhagavad-Gita affirmed that the basis of social and political system rests on the goodness of man (Vivekananda, 2000). Therefore, value system is superior which drives the right objectives. Wealth accumulation is to serve the objectives. The principle role of money is to serve the needs of the society. While the Vedas supports the concept of accumulation of wealth (Yajur-Veda 10-20, 5-19, 34-38), it also stated clearly the right path to earn great wealth and riches (Yajur-Veda 7-13). While accumulation of wealth is encouraged, the Vedic philosophy proposed the right action on the use of wealth- on self, commotion and donation for the welfare of others. It is also explicitly stated that whatever is given to the others selflessly, it returns in many folds (Rig-Veda 1-8).56

56 Id, p. 45
Business is viewed as legitimate and an integral part of society according to Vedic philosophy but essentially it should create wealth for the society through the right means of action. ‘Sarva loka hitam’ in the Vedic literature referred to ‘well-being of stakeholders’. This means an ethical and social responsibility system must be fundamental and functional in business undertakings. Put in simple business sense, the organization would sustain long-term advantages and obtain profits if it conducts its business ethically and be socially responsible.\textsuperscript{57} Vedic literature on business profoundly states by the following quote:

‘May we together shield each other and may we not be envious towards each other. Wealth is essentially a tool and its continuous flow must serve the welfare of the society to achieve the common good of the society’. (Atharva-Veda3-24).

The Vedic philosophy insists that quality of work and service needs to be achieved in the business process model for long-term sustainability, besides an equitable redistribution of wealth after having acquiring it. This core principle of Corporate Social Responsibility (CSR) expounded by the Vedic literature is being reengineered in the modern business models, namely, Total Quality Management (TQM), Business Process Reengineering and triple bottom-line sustainability.\textsuperscript{58}

In the Bhagavad- Gita, the key principles of Vedic philosophy is re-cemented in the Indian mind on the basic moral understandings required to achieve salvation through transcendental knowledge, the obedience to law of karma, self-realization, and the performance of actions under the framework of Vedic sciences. The Bhagavad-Gita is

\textsuperscript{57} Id, p. 47.

accepted as a universal body of knowledge and remains as a lifelong scientific and spiritual model for mankind. It triggers the search for self-realization and appropriate right action in the material driven world. Sri Krishna says in the Bhagavad-Gita (3-13), that all sorrows from the society would be removed if socially conscious members of a community feel satisfaction in enjoying the remnants of their work performed in yagna spirit (selfless welfare of others). In short, the Indian philosophy on business management is to inculcate corporate social responsibilities.\footnote{Radhakrishnan, S. “Indian Philosophy”, (Vol.1) (2\textsuperscript{nd} edn). (London:George Allen and Unwin, UK, 1929).}

\subsection*{2.7.2 Kautilyas Arthashastra and CSR}

Kautilya’s Arthashastra is one of the ancient Indian literatures which had provided some insights to CSR, although the context was written for his King (Chandragupta Maurya) to govern the state. The roots of the Arthashastra can be traced from the Rig Veda. The Arthashastra deals primarily with economics and politics. In chapter 59 of Santiparva, of the Mahabharata, the details of state administration in an organized society are provided. It is called Niti Sastra, which was composed by Brahmadeva and summarized by Sukracharya.

In his Arthashastra, Kautilya maintained that a king (leader or CEO in the context of organization) should have no self-interest, happiness and joy for himself, his satisfaction lies in the welfare (happiness) of his people, i.e. he has to submerge his personality into the larger personality of his people. Kautilya states, in the happiness of his subject lies the happiness of the king; and in their welfare lies his welfare. He shall not consider as good only that which pleases him but treat as beneficial to him, whatever pleases his subjects. Bahujana sukhaya bahujana hitayacha-the welfare of the many and
the happiness of the many. In fact, this concept of the happiness of the many need integrated into the area of corporate management as the basic principle. This ancient wisdom is also reflected in other languages. Two thousand years ago, Thiruvalluvar in Tamil Nadu wrote the Thirukkural and just like Kautilya’s Arthashastra, he also dealt with the characteristics of a well-run administration or socially responsible organizations. If a person rules according to dharma, that dharma itself will protect him (Dharmo Rakshathi Rakshitaha). In the Indian context, this example can be seen in Ramayana, when Sri Rama (king) had to make the painful decision to banish Sita (queen) from Ayodhya. Sri Rama as an ideal king had to uphold the honor of his dynasty. He needed to set examples for all generation to follow. Although Sri Rama’s decision to banish Sita may seem to be harsh, the king sometimes needs to be harsh, as the first duty of the king is to rule his people while other considerations are secondary, even if they affect personal happiness.\textsuperscript{60}

There are also similar advices in Shantiparva of the Mahabharata, wherein the public interest (welfare) is to be accorded precedence over his (leader’s) interest. A leader (king) should, without doubt, look upon the subjects as his children. In determining their disputes, however, he should not show compassion. In performance of his duties, he is enjoined to be impartial. In the ancient India, the leader (king) is often compared to the rain clouds, which bestow benefit, through rain (actions), to all and sundry, equally. In the context of corporate management, the organization (state) leader is a catalytic change agent. The Arthashastra views are wider and more comprehensive in this regard. The

leader (king) is the maker of his time. The important qualities and duties of the king are obtaining what has yet to be obtained, protecting what has been obtained, and increasing and properly using what has been obtained. Kautilya laid down three main responsibilities of a leader (king), they are raksha, which means security, palan, which means growth and yogakshema, which means welfare. The meanings and the context of the three responsibilities differ in depending upon the environmental context.61

CSR: happiness to all stakeholders

Kautilya stressed the importance of happiness to all stakeholders of an organization. He stated that happiness is obtained not only by wealth and profit, but also by doing things rightly and doing right things (sukhasya moolam dharma). Dharma without wealth according to Kautilya is toothless (dharmasya moolam artha), and wealth without dharma is useless because a poor person cannot support the entire society. Indian culture has always emphasized that sukhasya moolam dharma and dharmasya moolam artha taken together- namely, wealth does not lead to directly happiness. Happiness for self and others results through ethical behavior; wealth or resources make ethical behavior possible. This also means that one must strive to generate wealth-resources and money- share it equitably to create happiness for oneself and others. Such generation of wealth must also be through ethical means, which alone would lead to overall happiness.62

Kautilya further stated to generate wealth you require an enterprise or an organization or an asset (arthasya moolam rajyam). He then stated the support for organization is the organs (rajyasya moolam indriyajayah), the functions, processes,

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61 Id, p. 53.
62 Id, p 54-55.
activities, etc. The victory over organs of the body, which is the literal meaning of the word indriyajayah, is a well known concept in the Indian culture and this refers to the control over the five organs of sense and on five organ of action. Conquering the body organs are manifested through control over the six enemies of the mind. Only the governor or CEO who has conquered the organs of his body would be able to put the goals of the organization first, especially when in conflict with self-interest.63

Corporate social responsibility (CSR) can be defined as the “economic, legal, and discretionary expectations that society has of organizations at a given point in time” (Carroll and Buchholtz 2003, p.36). The concept of corporate social responsibility means that organizations have moral, ethical and philanthropic responsibilities in addition to their responsibilities to earn a fair return for investors and company with the law. A traditional view of the corporation suggests that its primary responsibility is to its owners, or stockholders. However, CSR requires organizations to adopt a broader view of its responsibilities that includes not only stockholders, but many other constituencies as well, including employees, suppliers, customers, the local community, local, state, and federal governments, environmental groups, and other special interest groups. Collectively, the various groups affected by the actions of an organization are called “stakeholders”.64

2.8 Conceptions of Corporate Social Responsibility according to Buddhism

“Buddhists recognize that acquiring wealth is one of life’s fundamental activities, and the Buddha gave many teachings on the proper way to acquire wealth”.65 The

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Buddha stressed a purpose for wealth acquisition that is rather different from most non-Buddhist business people: According to him the purpose of wealth is to facilitate human development through three stages, which are:

a) Material comfort and security
b) Mental well-being
c) Inner freedom.

Material comfort and security are not treated as ends in themselves, but as the foundation upon which the second and third higher goals are pursued. According to Payutto\textsuperscript{66} “If economics is to have any real part to play in the resolution of human problems, then all economic activities like production, consumption, work and spending must contribute to well-being and help to realize the potential for a good and noble life”.

Most publications on Buddhist economics point out that the fifth item in the Noble Eightfold Path is “Right Livelihood” which is judged not by the amount of material wealth it produces, but by the well-being it generates. It is also pointed out that many livelihoods which produce a surplus of wealth simply cater to desires rather than providing for any true need. This type of business would be frowned upon by a thoughtful Buddhist.\textsuperscript{67}

In recent years this attitude and practice has been spreading rapidly around the globe, and inspiring case studies are easily accessible. For example, a leading private sector business-to-business express delivery company makes a long-term commitment to charity through fund raising and personal involvement of staff. This results in improvement in the lives of physically, mentally or socially disadvantaged children, and


\textsuperscript{67} Id, p 6.
strong team working ethics within the company. The company seeks to lead the industry by: “Instilling pride in our people; creating value for our shareholders; and sharing responsibility for our world.” What many now see and accept as “Corporate Social Responsibility” fits well under the category of “enlightened self-interest”, which holds that acting to further the interests of others, we serve our own self-interest.\textsuperscript{68}

The Dalai Lama has also given some thought to the issue of contradictions between corporate and Buddhist interests:

“The former, primarily concerned with production, profit, and growth, seems to stand in contrast with the latter, which concerns itself with compassion for others and the well-being of humankind and our planet. However, when we take a closer look, we find that business practices and Buddhist principles are both concerned with happiness and making the right decisions. They are not such an awkward coupling after all; indeed, when working in concert they can address some of the foremost problems of our time.”\textsuperscript{69}

But the “enlightenment” of “enlightened business practice” or “Corporate Social Responsibility” will not come from legislated ethical compliance alone. It must come from a profound awakening and realization that short-term bottom-line profit does not lead to long-term well-being. Long-term well-being comes from achieving optimal balance (the middle way) between greed and benevolence.\textsuperscript{70}

Corporate Social Responsibility became a common economic tool for today’s corporations to address social problems and to achieve effective functioning. Nowadays almost every multinational and transnational company has a CSR policy dealing with crucial problems. The reasons of this can be stem from the ever growing pressures of

\textsuperscript{68} Supra note 63, p. 18.
\textsuperscript{69} Id., p 20.
\textsuperscript{70} Schumacher E F, “Buddhist Economics”. 1966
government regulators to ensure sustainable development, the public and local communities.

2.9 Indian CSR model

In accordance with the Indian philosophy, the characteristics of business excellence are intricately weaved around spiritual threads of Vedic and Bhagavad-Gita teachings. First, business excellence must be dedicated to spiritualism (of work). All other matter then falls into order. The business management corresponds to a cosmic order that is grounded with concepts of self-determination and self-realization. Secondly, business excellence should evolve around right actions and right measures. Self-realization that immoral business strategy and unethical business tactics only results in business losses. Thirdly, business wealth should be accumulated by applying the right actions that should be shared equitably with all stakeholders. Selfless sharing of profits brings long-term gains. Employees would be highly motivated, loyal and hugely committed to the organization. Finally, business excellence would be achieved if the business practices are ethical and social responsible to the society. This will result in long-term sustainability of the business. \(^{71}\)

An Indian CSR model can be possibly constructed upon the Vedic principles of virtue as key planks in modern business models. Key planks that should dominate the business models follow the spiritualism context of self-realization, the laws of karma, right measures and finally, the scientific approach of order. Sri Krishna in the Bhagavad-Gita states that ‘I am that action in all things that is unopposed to values’. Successful Indian companies can attest to this CSR model, namely, TATA group, Infosys, Wipro, 

\(^{71}\) Supra note 57, p. 171.
Bajaj, Sriram Investments, BHEL, Bharat Heavy Industries, Asian Paints, Brook Bond, and Larsen and Toubro to name a few.\(^{72}\)

In India, the term CSR might be new but the concept is not. It has been there since the earliest times, going back to an age when society itself was in its formative stages. It has been incorporated in the various religious laws where a part of one’s earnings are donated for the benefit of the poor and community welfare. The Hindus call it ‘\textit{dharmmada}’, the Muslims ‘\textit{zakatah}’, the Sikhs ‘\textit{dashaant}’; call it by name, the concept has been imbibed in the society from the very beginning. As individuals joined hands to form organizations, the same concept became embedded in the organizations.\(^ {73}\)

Gandhi’s philosophy of trusteeship is similar to the modern business world; the Gandhian notion of trusteeship has been followed by the Tatas and Birlas ever since their inception. The idea of social responsibility is very old in our country. The concept of parting with a portion of one’s surplus wealth for the good of society is neither modern nor a Western import into India. The business community occupied a significant place in ancient Indian society. Merchants were treated with respect and civility and regarded as an instrument of social good, not least because of their philanthropy. Nourished by a social and religious ethic which put charitable giving high on its list of virtues, charity was an ingrained part of the life of most hereditary merchant communities that form the backbone of the modern business class.\(^ {74}\)


Merchants provided relief in times of famine or epidemics by throwing open godowns of food and treasure chests to look after the needy; built and supported temples, dharmashalas (pilgrim rest houses), night shelters, bathing ghats, water tanks, wells, and pinjrapoles (animal refugees) and provided drinking water facilities. They donated for education in traditional schools and even for dowries for poor girls. The practice of business giving continued through the ages, though as economic, political and social conditions changed, so did business response to social needs. This can be summed up as a shift from merchant charity to corporate citizenship. There are four phases in the shift, they are-

2.10 Four phases of modern philanthropy

i) 1850-1914

The first shift was from a more or less purely ameliorative charity for religious reasons and causes during the pre-industrial era (pre-1850), towards the more Western form of philanthropy in the period 1850-1914. The period saw the beginnings of industrialization in India and like their counterparts in the West, the new rich business families began to set up trusts and endow a host of modern institutions such as schools, colleges, hospitals, orphanages and widows homes, art galleries and museums for the welfare of society and the preservation and propagation of Indian culture. At the same time, they continued to contribute to older forms of charity such as building and maintenance of temples, dharmashalas and water tanks so that there were elements of both charity and philanthropy in business giving. The Gujarati and Parsi business communities of Mumbai in particular, led by Jamshedji Jejeebhoy, Jamsetji Tata, Sir Dinshaw Petit and Premchand Roychand, spearheaded the new trend. The early pioneers

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of industry were leaders not only in the economic but also the social fields and took active interest and part in the religious and social reforms and in public life.\textsuperscript{76}

**ii) 1914 – 1960**

In the second phase (1914-1960), which was the golden period of both Indian capitalism and business philanthropy, there was a maturing of philanthropic practice. Apart from making political donations for the freedom struggle, business also contributed to many of the social and cultural causes associated with the movement such as revival of Indian art and culture, nationalist education and so on. Many of India’s leading businessmen- GD Birla, Jamnalal Bajaj, Lala Shri Ram, Ambalal Sarabhai and others came under the spell of Mahatma Gandhi and his theory of trusteeship of wealth. They contributed liberally to his programmes for the removal of untouchability, women’s emancipation and rural reconstruction, even as the earlier preoccupation with creating a physical and social institutional infrastructure continued, further honed by the vision of a free, progressive and modern India.

When India became free, the independent state looked to the business community to propel the country to a prosperous future and in the euphoria of Independence, the business class, confident of its capabilities, responded both by creating more wealth and utilizing it for non-business purposes. Several business leaders endowed institutes of scientific and technical research as well as art academies and institutes for the study of Indian history and culture. Many of the best Indian institutions in several fields, such as the Tata Institute of Fundamental Research, the Birla Institutes of Technology at Pilani

\textsuperscript{76} Id, p 592
and Ranchi, the Calico Textile Museum, Ahmadabad to name a few, owe their existence to private business munificence of the time.\textsuperscript{77}

ii) 1960 – 1980

The next shift came in the 1960s which ushered in an era of economic and political troubles and saw the business community operating under several constraints. The state also took on many of the obligations that were traditionally the responsibility of the society as a whole, such as education, care of sick, relief in the wake of natural calamities and care of the destitute. It led to a corresponding decrease of interest in private philanthropy. Mistrust of business consequent to sharp and unethical practices by some, coupled with high taxes to finance state led development, further contributed to the disinclination to part with private wealth for public benefit. Ironically, the high tax regime aided by deterioration in business morality led to a large expansion in the establishment of charitable trusts for purposes of tax planning.

The disillusionment consequent to the failure of the government to remove poverty and bring about social change at the pace required to remove the ever widening gap between the rich and the poor and to provide a richer quality of life, led to a renewed interest in private initiative to spearhead change. It made individuals look to voluntarism as a solution and an alternative to official action, and made business more conscious of the need to contribute to approve national development goals. The 1970s thus saw a renewed corporate interest in social concerns and a new element emerged on the philanthropic scene- corporate philanthropy, as distinct from family business philanthropy. Spurred partly by the realization that supporting community development through philanthropic giving is in their own best business interests and partly by the use

\textsuperscript{77} Id, p 593-94.
of the carrot and stick method by the government, several business leaders began to advocate more social responsibility on the part of business. Of this, philanthropic giving was only one aspect, the others being more ethical business practices and concern for the physical environment in which business operated. There was a diversification in the causes supported, such as afforestation, science education for the people, preservation of monuments, women’s rights and consumer education.\textsuperscript{78}

1980 –

The post 1980 period saw an upswing in business fortunes due to economic reforms and other factors and with it, a re-emergence of self – confidence. It increased both business willingness and ability to give, as well as public and government expectations of business. This contemporary phase, characterized by corporate citizenship, has seen a further swing away from charity and traditional philanthropy towards more direct engagement in mainstream development concerns and in helping disadvantaged groups in the society.

The development of business and industry in India has been accompanied by a clear change in the attitudes of society and the business community itself about its obligations to society and how they need to be expressed. It may be stated that the shift from merchant charity to corporate citizenship is not complete and it is not unusual to find all the three – charity, philanthropy and corporate citizenship – being practiced by the same business family or corporation.

The nature and scope of corporate social responsibility has changed over time. The concept of CSR is a relatively new one – the phrase has only been in wide use since the 1960s. But, while the economic, legal, ethical, and discretionary expectations placed

\textsuperscript{78} Id, p. 598.
on organizations may differ, it is probably accurate to say that all societies at all points in time have had some degree of expectation that organizations would act responsibly.\textsuperscript{79}

In the eighteenth century the great economist and philosopher Adam Smith expressed the traditional or classical economic model of business. In essence, this model suggested that the needs and desires of society could best be met by the unfettered interaction of individuals and organizations in the marketplace. By acting in a self-interested manner, individuals would produce and deliver the goods and services that would earn them a profit, but also meet the needs of others. The viewpoint expressed by Adam Smith over 200 years ago still forms the basis for free-market economies in the twenty-first century. However, even Smith recognized that the free market did not always perform perfectly and he stated that marketplace participants must act honestly and justly towards each other if the ideals of the free market are to be achieved.

In the century after Adam Smith, the Industrial Revolution contributed to radical change, especially in Europe and the United States. Many of the principles espoused by Smith were borne out as the introduction of new technologies allowed for more efficient production of goods and services. Millions of people obtained jobs that paid more than they had ever made before and the standard of living greatly improved. Large organizations developed and acquired great power, and their founders and owners became some of the richest and most powerful men in the world. In the late nineteenth century many of these individuals believed in and practiced a philosophy that came to be called “Social Darwinism,” which is the idea that the principles of natural selection and survival of the fittest are applicable to business and social policy. This type of philosophy

justified cutthroat, competitive strategies and did not allow for much concern about the impact of the successful corporation on employees, the community, or the larger society. Thus, although many of the great tycoons of the late nineteenth century were among the greatest philanthropists of all time, their giving was done as individuals, not as representatives of their companies. Indeed, at the same time that many of them were giving away millions of dollars of their own money, the companies that made them rich were practicing business methods that were exploitative of workers.  

Around the beginning of the twentieth century a backlash against the large corporations began to gain momentum. Big business was criticized as being too powerful and for practicing antisocial and anticompetitive practices. Laws and regulations, such as the Sherman Antitrust Act, were enacted to rein in the large corporations and to protect employees, consumers, and society at large. An associated movement sometimes called the “social gospel,” advocated greater attention to the working class and the poor. The labor movement also called for greater social responsiveness on the part of business. Between 1900-1960 the business world gradually began to accept additional responsibilities other than making a profit and obeying the law.

In the 1960s and 1970s the civil rights movement, consumerism and environmentalism affected society’s expectations of business. Based on the general idea that those with great power have great responsibility, many called for the business world to be more proactive in (1) ceasing to cause societal problems and (2) starting to participate in solving societal problems. Many legal mandates were placed on business related to equal employment opportunity, product safety, worker safety, and the

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environment. Furthermore, society began to expect business to voluntarily participate in solving societal problems whether they had caused the problems or not. This was based on the view that corporations should go beyond their economic and legal responsibilities and accept responsibilities related to the betterment of society. This view of corporate social responsibility is the prevailing view in much of the world today.\(^{81}\)

By having a comparative study on the approaches or perspectives of developed and developing nations like U.S.A., U.K., India, China, etc., on corporate social responsibility we could easily assess the marked difference in discharging their socio-economic responsibilities. The concept of corporate social responsibility emerged in the United States of America as a social and political reaction to the rapid growth of capitalism during the thirty years following the American civil war. The American government assumed responsibility for correcting the social behavior of big corporations as early as the 1890s and it passed laws on child labor, safety at industrial sites, and on workers’ rights to form trusts. Talking about the 21\(^{st}\) century scenario which has drastically changed in every sense, so the U.S., Government has also acted upon these changes in business activities by legislating several acts and laws. For instance, the Federal Government has passed legislations such as the National Environmental Protection Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Toxic Substances Control Act and a host of others just to protect the environment, consumers as well the organizations in those industries. Governmental CSR policies do not only assist consumers or organizations, they assist both the consumer and the organization. Another governmental policy that assists consumers and the organization is

the Public Company Accounting Reform and Investor Protection Act of 2002 also known as the Sarbanes – Oxley Act of 2002.\textsuperscript{82}

**European Union** environmental regulations are in line with the U.S environmental laws. The United States Environmental Protection Agency has a database of all contaminated lands in the U.S; this database includes existing and formerly contaminated lands. The European Union, especially France has also developed databases to track existing and formerly contaminated lands within France. To develop public awareness and to identify and keep records of contaminated land in France, the Ministry for Environment has been developing several databases containing information on potentially contaminated sites. This is an effort to protect the public from coming into contact with contaminated lands. Therefore, international governmental policies do not differ from one another, as they all seek to protect the public and the organizations.\textsuperscript{83}

There are manifold CSR – activities in \textbf{Brazil}; however, the development of CSR was and remains largely driven by the business community, in particular business associations. In the 1990s the actors and institutions promoting CSR expanded to include political parties, nongovernmental organizations, trade unions, the media, local government, consumers and shareholders. However, the current Brazilian government does not show a high level of engagement regarding CSR promotion. It is worth noting that CSR policies are at different stages of development at the state and municipal levels. To some extent multilateral organizations are most relevant for shaping CSR policies in Brazil. The main aim of the public sector’s CSR activities is to mobilize additional business resources for social and cultural programs that are in line with public interests.

\textsuperscript{82} \textit{Supra} note 63, p. 54-55.

\textsuperscript{83} Klempner Geoffrey,” Philosophy of CSR, Philosophy for Business Issue 27, March-2006.
The main mandating activities of the Brazilian public sector therefore concentrate on tax incentives to foster company’s social investments. In respect to partnering, some efforts are made by the public sector to promote social investments on the part of the business community.\textsuperscript{84}

However, there are limits to what government control and legislation can achieve. Governments- the UK government for example- are now urging companies to do a lot more than the law requires. According to British Chancellor of the Exchequer Gordon Brown from a recent UK government document on CSR: ‘Today, Corporate Social Responsibility goes far beyond the old philanthropy of the past- donating money to good causes at the end of the financial year – and is instead an all year round responsibility that companies accept for the environment around them, for the best working practices, for their engagement in their local communities and for their recognition that brand names depend not only on quality, price and uniqueness but on how, cumulatively, they interact with companies’ workforce, community and environment. Now we need to move towards a challenging measure of corporate responsibility, where we judge results not by the input but by its outcomes: the difference we make to the world in which we live, and the contribution we make to poverty reduction.’ Gorden Brown would like to say that pursuing CSR is in a company’s own self- interest. CSR adds value to its ‘brand name’. The argument is that customers are now sufficiently well-informed to choose products not only because of their inherent usefulness or value but also on the basis of their judgment of a company’s commitment to pursuing socially worthwhile ends.\textsuperscript{85}

\textsuperscript{85} Supra note 71, p 2
Though the concept of corporate social responsibility has only recently been formulated, there is a long history in both the East and West of a commitment to social philanthropy, in the belief that the creation of wealth is primarily geared for social good. This aspect of ethical business in modern times can be traced back to 19th century philanthropists like Robert Owen and the various Quaker-owned businesses. The Quakers “ran successful businesses, made money because they offered honest products and treated their people honestly, gave honest value for money, put back more than they took and told no lies”.

In recent years CSR has become a fundamental business practice and has gained much attention from the management of large international companies. They understand that a strong CSR program is an essential element in achieving good business practices and effective leadership. Companies have explored that their impact on the economic, social, and environmental sector directly affects their relationships with investors, employees, and customers. As companies face themselves in the context of globalization, they are increasingly aware that Corporate Social Responsibility can be of direct economic value. Although the prime goal of a company is to generate profits, companies can at the same time contribute to social and environmental objectives by integrating corporate social responsibility as a strategic investment into their business strategy.

In India, the concept of CSR is governed by clause 135 of the Companies Act, 2013, which was passed by both Houses of the Parliament, and had received the assent of the President of India on 29 August 2013. The CSR provisions within the Act is applicable to companies with an annual turnover of 1,000 crore INR and more, or a net

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87 *Supra* note 64, p 50.
worth of 500 crore INR and more, or a net profit of five crore INR and more. The new rules, which will be applicable from the fiscal year 2014-15 onwards, also require companies to set-up a CSR committee consisting of their board members, including at least one independent director.  

The Act encourages companies to spend at least 2% of their average net profit in the previous three years on CSR activities. The ministry’s draft rules, which have been put up for public comment, define net profit as the profit before tax as per the books of accounts, excluding profits arising from branches outside India. The Companies Act, 2013 ("Act") has introduced several provisions which would change the way Indian corporate do business and one such provision is introducing Corporate Social responsibility ("CSR") activities. The board of the company should ensure that the company contributes 2% of its average net profit during the 3 preceding financial years to CSR activities. “Average net profit” shall be calculated in accordance with the provisions of section 198 of the 2013 Act which states for calculation of profits of a company in any financial year.

In India there are an existent but small number of companies which practice CSR. This engagement of the Indian economy concentrates mainly on a few old family owned companies, and corporate giants such as the Tata and Birla group companies which have led the way in making corporate social responsibility an intrinsic part of their business plans. These companies have been deeply involved with social development initiatives in the communities surrounding their facilities. Gandhi’s philosophy of trusteeship is similar to the CSR of the modern business world. Gandhian notion of trusteeship has been

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followed by the Tatas and Birlas ever since their inception. Jamshedji Tata with his vision to create Indian Iron and Steel Industry transformed an unknown village ‘Sakchi’, later renamed as ‘Jamshedpur’ in to a model of town planning and community care. Jamshedpur, one of the prominent cities in the northeastern state of Bihar in India, is also known as Tata Nagar and stands out at a beacon for other companies to follow. Jamshedpur was carved out from the jungle a century ago. Tata’s CSR activities in Jamshedpur include the provision of full health and education expenses for all employees and the management of schools and hospitals.

The National Dairy Development Board (NDDB) has transformed huge areas in Indian villages by empowering producers and creating a marketing outlet for their produce. Dr. Kuriens AMUL-led Operation Flood was the forerunner of this initiative, which has spread to many states and similar operations. The Tatas, under the chairmanship of S. P. Kotwal conducted a social audit, the aim of which was to find out areas where Tata was not able to discharge its responsibility towards society. The reason for all these are, CSR adds value to the social environment, the work environment, and ultimately to the company. According to a report, nine of the top ten Forbes 500 firms have something in common besides success: CSR programmes. Corporate philosophy is undergoing a change, from “profit making” to value creation”- something far more enduring. In spite of having such life-size successful examples; CSR in India is in a nascent stage. In the informal sector of the Indian economy, which contributes to almost the half of the GNP and where approximately 93% of the Indian workforce is employed, the application of CSR is rare. On the contrary, the fight against poverty, the
development of education, as well as the conservation of the environment are not existent in most of the Indian enterprises.\footnote{Id, p. 51.}

The Infosys Foundation supports disadvantaged people directly or through organizations. The Foundation prefers to work through smaller organizations and donates in kind rather than cash. For instance, recently it gave books in Kannada worth Rs 10,000 to a village library, so that it could help strengthen the local language. The founders of mega-successful Infosys N.R.Narayanamurthy believe that wealth must be equitably distributed “Unless you create wealth by legal means, you cannot distribute it. And without the two you do not have progress”. In the field of education, the Foundation has instituted 26 scholarships for Ph.D scholars in 13 prestigious institutions. It has also anchored the ‘train the trainee’ program in which computer science students from engineering colleges are exposed to the latest IT trends. The Foundation has also played an important role in setting up science centers and libraries and to date, 1001 libraries have been inaugurated with assistance from this foundation. The Infosys Foundation is committed to giving 30% of its funds to old people, the destitute and handicapped, 15% for rural development, 30% for the education of poor but talented children, 15% for cultural activities and 10% for the health care, both in village and cities.\footnote{Upadhya V Padma and Parthasarathy Chitra., “The Concept of ‘Giving back’: A Case of Infosys Foundation. Corporate Social Responsibility, Concepts and Cases, The Indian Experience”, p 478.}

Dr.Irani propounded five basic tenets of CSR at the 27\textsuperscript{th} annual meet of the US-India Business Council meeting: “The primary aim of industry should not be make money. The aim should be to serve customers and other stakeholders and the result would surely be more money. And pursuing excellence would enable it to create even more wealth”. Companies are increasingly required to apply Corporate Social Responsibility
by balancing the economic, social and environmental dimensions of their operation whilst building shareholders value. Corporate governance is about promoting corporate fairness, transparency and accountability.

CSR refers to the obligation of an organization which considers the interests of all their stakeholders which includes the customers, employees, shareholders, communities and ecological considerations in all aspects of their operations. This obligation is seen to extend beyond their statutory obligation to comply with legislation. CSR goes beyond the normal charity activities of an organization and this requires that the responsible organization take into full account of its impact on all stakeholders and on the environment when making decisions. In a nutshell, CSR requires the organizations to balance the needs of all stakeholders with its need to make a profit and reward shareholders adequately. A widely quoted definition by the World Business Council for Sustainable Development states that, “Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large”.

Practices of CSR date back to the ancient Greece. A similar development on CSR took place on the Indian subcontinent structured from the Vedic philosophy. Early conceptualization of CSR was broadly based on religious virtues and values such as honesty, love, truthfulness and trust. Such values were found dominant in the golden rule constructed by Immanuel Kant’s Categorical Imperative. This has also been argued that this golden rule can be applied in viewing companies as responsible to stakeholders and

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society. Implicitly, this argument suggests that those who do not practice such values are deemed to be unethical and not concerned of societal welfare. Since then, civilizations has been in the process of wealth accumulation through a series of business venture travels to colonies; then industrial revolution to capitalize production processes; and finally multinational corporations to maximize profits from the modern theories of comparative advantage. Practices of CSR were neglected and overshadowed by the pursuit of wealth accumulation.92

A revival of interest in CSR began after the World Wars. Contemporary western conceptualization of CSR from an academic perspective was initiated with Bowen’s definitive text his publication in 1953. His work on CSR broadly focused on the pursuit of policies that makes decisions or to follow those lines of action that are desirable in terms of the objectives and values of our society. The World Business Council for Sustainable Development (WBCSD, 2000) argued that companies have an obligation to society and are responsible to numerous stakeholders including owners, employees, customers, suppliers, competitors, government regulators and communities. CSR practices in the Indian philosophy sits deep-rooted in the concept of dharma.

2.11 Conclusion

From the evolution of corporate liability under English law and Indian law, it can be inferred that corporate management was gradually made more and more answerable to the investing public. In the post independence India, the Central Government was gradually being more and more empowered to control the corporate management to protect the interest of the investors, the company itself and the public interest. As discussed above, CSR is not a new concept in India. CSR has gone through many phases

92 Id, p. 412.
in India. The ability to make a significant difference in the society and improve the overall quality of life has clearly been proven by the corporates. Not one but all corporates should try and bring about a change in the current social situation in India in order to have an effective and lasting solution to the social woes.

Ever since their inception, corporates like the Tata Group, the Aditya Birla Group, and Indian Oil Corporation, etc have been involved in serving the community. Through donations and charity events, many other organizations have been doing their part for the society. The basic objective of CSR in these days is to maximize the company’s overall impact on the society and stakeholders. A growing number of corporates feel that CS is not just another form of indirect expense but is important for protecting the goodwill and reputation, defending attacks and increasing business competitiveness.