



## Corporate responsibility for environmental sustainability: A perspective

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### Introduction

This article contemplates the role of corporations in environmental sustainability on the ground, which emphasizes on the close relationship human beings have with the environment. It attempts at defining the duty and responsibility of corporations in balancing development and environment on a sustainable basis.

### 1. Corporations and Human Persons

Corporations exist in the society of persons. They are artificial persons, created and managed by natural persons who are individual human beings with human behavior and human needs. One such need is the need to be in relation with the society and to be accepted by a community in which they live. A distinguished thinker, John Macmurray, emphasizes that 'human being is a being of relation'.<sup>[1]</sup> Relationship, in its deeper aspect, embraces relationship with the self, with other human beings, with the community/society, with the environment and with the cosmos. The need to be in relationship is necessary for growth and development of a human person to his or her full potential.<sup>[2]</sup>

To some measure, this notion may be extended to corporations by virtue of their being constituted of and managed by natural persons. Actually, the growth and success of a corporation depends largely on the dynamics of human relation that extends to the stakeholders and the community at large. In fact, one approach to corporate governance and, subsequently, to corporate social responsibility, is a relationship approach. The very concept of 'responsibility' strongly suggests a relationship. Relationship entails rights, duties and responsibility.

The concept that corporations can and should act ethically and be accountable to society for their actions suggests that corporations have a duty.<sup>[3]</sup> both legal and ethical – to various groups in society. Corporations have a duty towards the shareholders, the employees, the consumers, and towards the society as a whole. They have a duty to act in the interest of the shareholders because of the nature of their relationship with the directors and the officials.<sup>[4]</sup> The duty towards the consumers is not only an ethical duty but also a legal duty.<sup>[5]</sup>

This article is a small attempt at exploring this relational approach to the concept of Corporate Social Responsibility (CSR) in relation to the environment and the community. This approach makes it desirable to appreciate the personality of the corporation, which is briefed in the first part of the article. It then highlights the concept of Corporate Governance given that it is the building block of Corporate Social Responsibility.

The paper examines the purpose of the company in the light of the relationship approach to CSR. The paper also examines CSR in the Indian context and touches upon some issues, concerns, challenges and opportunities in CSR agenda.

### 2. Corporate Personality

A corporation basically means a group of individual persons coming together to carry on a business for profit. Corporation is a creation of law, a business entity recognised by law. A company may be unincorporated, but —when we speak of a company we usually mean an incorporated company, a corporation.<sup>[6]</sup> As per section 2(7) of the Companies Act, 1956, a corporation includes a company incorporated outside India. Under section 3(1), the meaning of the word 'company' is narrower than the expression 'corporation'. A company —implies an association of a number of people for some common objects...In common parlance, the word 'company' is normally reserved for economic purposes, i.e., to carry on a business for gain.<sup>[7]</sup> However, there are also non-profit companies registered under the Companies Acts.<sup>[8]</sup>

### Legal Personality

In legal parlance, the word 'person' refers both to a human being (natural person) as well as a juristic person (artificial person, such as the corporation). The term 'person', according to the *Oxford English Dictionary*, comes from the Latin word 'persona' which means 'mask' or character in a play. Its etymology can be traced from different languages and cultures.<sup>[9]</sup>

In antiquity, *persona* was derived from *personare* (to ring through). Modern investigators seek its origin rather in the Etruscan word for mask, *phersu*. Its second meaning 'face', however, is also already an old one. *Persona* has also come eventually to mean 'person'. This meaning occurs more often. In Hebrew the word *panim* also has the meaning of face or person. In Greek we find the word *proson* for 'person', its first meaning also being 'face'.

Well known jurists define the term person in terms of rights, duties and will. According to Salmond, —A person is any being, whom the law regards as capable of rights and duties. Any being that is so capable, is a person whether a human being or not and nothing that is not so capable is a person even though he be a man.<sup>[10]</sup> For Gray, a person is an —entity to which rights and duties may be attributed.<sup>[11]</sup> For Zitelmana, 'will' is the essence of legal personality. Personality for him is the —legal capacity of will, the bodiliness of men for their personality a wholly irrelevant

attribute<sup>[12]</sup>.

This understanding of a legal person or juristic person, as an entity attributed with rights and duties, confers a legal status upon various entities such as the unborn natural persons,<sup>[13]</sup> dead persons,<sup>[14]</sup> animals, idols, mosques, church, temple, universities, colleges, hospitals, limited companies (corporation aggregate), the President of India (corporation sole), The Union of India and the States,<sup>[15]</sup> etc.

## Personality of Corporations

### The Legal Fiction One Entity Two Persons

The nature of corporate personality has been explained through various theories, one of which is the Fiction Theory. The *Fiction Theory*.<sup>[16]</sup> sees the corporation as a creation of the law; their legal personality is recognized only after incorporation under the law. It has no personality apart from what is given by the State. Corporation is a legal fiction which is given a legal entity and has its own will clothed with the will of an individual member. The will (*animus*) of the corporation is different from the will of its individual members. Like fictitious personality, its will is also an imaginary creation of law. It is a distinct person different from its members. Like any juristic person, it is legally an entity apart from its members, capable of rights and duties of its own, and endowed with the potential of perpetual succession. It is an entity having existence apart from the individual members who form the corporate group. Consequently, change in the membership affects neither the existence nor the unity of the corporation. This theory is mainly supported by Savigni, Salmond, Coke, Blackstone and Holland.

The English Law as well as the Indian Law recognizes the legal personality of corporations. That is, both legal systems recognize the capacity of corporations to enjoy rights and duties. However, unlike human persons/human beings (natural persons), a corporation is an artificial person that is constituted by a group of individual members (*corpus*) and a 'will' (*animus*) to which is attributed by legal fiction.<sup>[17]</sup> Thus, a corporation:

1. Has an independent existence from its members;
2. Has a perpetual succession;
3. Can sue and can be sued for breach of duties;
4. Has members having limited liability;
5. Owns and can sell property in its name.

In *Solomon v. Solomon and Co. Ltd.*,<sup>[18]</sup> it was held that a corporation has its own personality (independent existence) separate and distinct from its members:

—The company is at law a different person altogether from subscribers to the memorandum, and though, it may be that after incorporation the business is precisely the same as it was before, and the same persons are the managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees to them. Nor are the subscribers, as members, liable, in any shape or form, except the extent and in the manner provided by the Companies Act.

The Calcutta High Court had recognized this position even before *Solomon's* case in *Re Kondoli Tea Co. Ltd.*,<sup>[19]</sup> when it held that —the company was a separate legal person, a separate body altogether from its shareholders and the transfer was as much a conveyance, a transfer of the property, as if the shareholders had been totally different persons. In *Tata*

*Engineering & Locomotive Company Ltd. v. State of Bihar*,<sup>[20]</sup> the Supreme Court of India observed that the corporation in law is equal to a natural person and has a legal entity of its own.

One aspect of the Fiction Theory is obviously an analogy of the Aristotelian *hylomorphic compounds*: principle of *matter-form, substance-accidents* or *esse-essence*, which was effectively used in the Scholastic metaphysics. The corporation (*matter/substance/essence*) is seen as different from its individual members (*form/accidents/esse*). This is evidenced from the propositions that a corporation as an entity does not come into existence without its members; and that it exists even if its individual members keep changing: one identity, two persons distinct yet not separated. Even though the theory is very abstract and of little practical application, it is useful at least in two aspects: one, the first part of the proposition has an advantage in establishing liability for, imposing duty or attributing responsibility to the corporation; two, the second part, i.e., its independent legal existence, has the great advantage of creating limited liability,<sup>[21]</sup> where only the company is liable for its debts, while the shareholders are liable only to the extent of their shares.<sup>[22]</sup>

### 3. Business Ethics and Responsibility

The company does not exist merely as a legal institution. It is rather a legal device for the attainment of any social or economic end and to a large extent publicly and socially responsible.<sup>[23]</sup>

The legal position in criminal law that corporations 'can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offence'<sup>[24]</sup> would — by implication and on the same underlying principle — mean that corporations have a mind, by virtue of their being directed, controlled and managed by natural persons,<sup>[25]</sup> and so they are expected to act ethically and responsibly. Good relationships entail responsibility at the same time as climbing the ladder of success in profit-making. Business responsibility takes into account values and ethics in such endeavour.

Business ethics leads to the evolution of Corporate Governance and from the idea of Corporate Governance and business ethics flows the concept of Corporate Social Responsibility.<sup>[26]</sup>

### 4. Corporate Governance

Corporate Governance may be broadly approached as a *System*, a *Process* and a *Relationship*. For example, the Cadbury Committee, in its Report, defines Corporate Governance as the —system by which companies are directed and controlled.<sup>[27]</sup> For Parkinson, it is the —process of supervision and control...intended to ensure that the company's management acts in accordance with the interests of the shareholders.<sup>[28]</sup> Thus, on the one hand, direction and control are considered to be the —two cornerstones of a corporate governance system.<sup>[29]</sup>

On the other hand, the relationship aspect is thought about by Monks and Minnow.<sup>[30]</sup> who define corporate governance as: [T]he relationship among various participants in determining the direction and performance of corporations. The primary participants are (1) the shareholders, (2) the

management (led by the chief executive officer), and (3) the board of directors.

These authors also mention the other such participants that —include the employees, customers, suppliers, creditors and the community.<sup>[31]</sup> The community should be understood to include its environment, culture and value system. —Effective corporate governance is a combination of ethical, physical, financial, mental, emotional and spiritual intelligence.<sup>[32]</sup> These are the values that qualify human relationship in a corporation, for the reason that —corporate governance is nothing, if not human.<sup>[33]</sup> Therefore, corporate governance is —not only about the business of making money for shareholders but it is also about the quality of life we can live as human beings.<sup>[34]</sup>

### 5. Corporate Social Responsibility (CSR)

Corporate Social Responsibility is the —assumption of responsibilities by companies, whether voluntarily or by virtue of statute, in discharging socio-economic obligations in society.<sup>[35]</sup> The World Business Council for Sustainable Development (WBCSD) defined Corporate Social Responsibility as —the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life.<sup>[36]</sup> Thus the concepts of corporate philanthropy and trusteeship or stewardship are implied in the notion of Corporate Social Responsibility.

#### Theories of CSR

The main CSR theories can be classified into four groups:<sup>[37]</sup>

1. *The Instrumental Theories*: In this group, corporations are perceived as only instruments for profit-making and; their social functions are thus seen as the means towards this end;
2. *The Political Theories*: These theories concern themselves with the power of corporations in society and a responsible use of this power in the political arena;
3. *Integrative theories*, in which the corporation is focused on the satisfaction of social demands; and
4. *Ethical theories*, based on ethical responsibilities of corporations to society.

In practice, each CSR theory presents four dimensions related to profits, political performance, social demands and ethical values. There is a need to emphasise on an invaluable model of the company and society relationship, which should integrate these four dimensions. In so doing, we need to make out the very purpose of the existence of the company.

#### Purpose of the Company

What is the ultimate goal of a company? If it is mere accumulation of profit.<sup>[38]</sup> alone, where profit is considered as an end in itself, or where profit becomes the sole motive or exclusive goal of the company, then persons and the community may possibly be treated as mere means of profit-making. Here arises the danger of mindless exploitation of human and natural resources resulting in extensive economic inequality and destruction of the environment. But if we ascribe the aspect of relationship, solidarity and interdependence to the corporations then we will find that it is possible both to generate wealth and at the same time

benefit people in terms of non-financial aspects of their lives.<sup>[39]</sup> Accordingly, greater emphasis is laid on ‘profit-optimization’ rather than ‘profit-maximization’ as the goal of the company. S. Sheikh uses the term ‘profit-optimization’ as different from the term ‘profit-maximization’ to imply social responsibilities and obligations of the company.<sup>[40]</sup>

The inter-dependent relationship.<sup>[41]</sup> between corporations and the community (stakeholders) is particularly felt in this age of globalization and economic liberalization in which trans-border or global transactions involving powerful corporations are being carried out round the clock. The society/community is largely dependent on the goods produced and services provided by the company either at home or abroad. Simultaneously, the company, for its profit, depends on the resources both human and physical – available in the community. This mutual dependence gives way to mutual enrichment, which is a give-and-take process – a win-win situation. At the same time the impact of the company’s activity on the environment, health, education and the quality of life and the livelihood of the local community in which the company exists and does business should be assessed for a more positive contribution to the well-being of society.

Thus in a relationship model, the ends of a company is mutual enrichment – the benefit of both; the welfare of the whole community within which the company operates; in short, the achievement of a Common Good.<sup>[42]</sup> The corporation, through its CSR programmes, becomes a responsible participant in the achievement of the common good.

### 6. Indian Perspective

The concept of Corporate Social Responsibility is not new to India. It may be traced to the ancient Indian concept of *Dharma* which, among other things,<sup>[43]</sup> also connotes an individual’s sense of duty, responsibility or obligation towards the community. Likewise, in an equalitarian society like the Khasi tribal community of India, the principles of *kamai ia ka Hok* (literally ‘to earn Righteousness’), and *tip Briew tip Blei* (literally ‘Human-conscious, God-conscious’) strongly entreat the values of solidarity, honesty, fair dealings and social responsibility in business endeavour and human relations. In the context of India as a developing country, CSR

can be considered as representing the —formal and informal ways in which business make a contribution to improving the governance, social, ethical, labour and environmental conditions...while remaining sensitive to prevailing religious, historical and cultural context.<sup>[44]</sup> Thus, the concept of sustainable development is inherent both in the Indian value system and in CSR agenda.

#### The Present Indian Context

##### Economic Social and Political Realities

In the era of Globalization and liberal economic policies, India has moved from its socialistic pattern to the free market economy.<sup>[45]</sup> India’s economic growth may thus be seen in term of trade and commerce.<sup>[46]</sup> In this free market economy there grows a trend of economic inequality – the increasing gap between the rich and the poor. On the subject of economic development, situations in India are very diverse. Some regions are highly developed, others are moving towards the process of development, through effective economic policies,

and others still find themselves in abject poverty, malnutrition, starvation and food crises in the midst of plenty. There is a phenomenon of urbanization and the emergence of huge urban masses, often with large depressed areas where organized crime, terrorism, prostitution, slum dwelling and the exploitation of the weaker sectors of society thrive. Migration too is a major social trend, exposing millions of people to situations which are difficult economically, culturally and morally. People migrate from the rural areas to the urban areas for many reasons, among them unemployment and poverty. They shift to the major cities of India in search of job to earn their livelihood.

Some of the ideologies accompanying Globalization undermine traditional, social and cultural values. Corruption is rampant in almost every aspect of life in India. It exists at various levels of both government and society.

The persistent poverty and the exploitation of people in India, especially women and children, are matters of critical concern. Tourism also demands special attention. Though a lawful industry with its own cultural and educational values, tourism has, in some cases, a disturbing influence upon the moral and physical background of India as noticeable in the degradation of young women and even children through human trafficking and prostitution, besides environmental concerns.

The mass media has been an effective means of communication and, at the same time, it has also an adverse impact on the Indian society. New forms of behaviour are emerging, especially among the children, as a result of over-exposure to the mass media and the kinds of websites, literature, music, pictures and films that are flourishing in the market. As a result, the negative aspects of the media and entertainment industries are threatening traditional Indian values, and in particular the value of marriage and the stability of the family in India. The effect of images of violence and obscene pictures tend to corrupt the tender mind.

In the Indian political scenario, today there are new demands for greater political justice, more participation in government and the political life of the nation. The people of India are becoming more and more aware of their political rights and more determined to safeguard them. Ethnic, social and cultural minority groups are finding out ways to become instruments of their own social progress through active participation in politics. However, there is also a rising awareness throughout India of people's ability to change unjustifiable political treatments.

### **Religious and Cultural Realities**

In the context of culture and religion, the most striking feature of India is the variety of its peoples who are successors of ancient cultures, religions and traditions. India is home of many cultures, languages, beliefs and traditions, which comprise such a significant part of human history. India is also the cradle of some of the world's major religions—Hinduism, Islam, Sikhism, Christianity, Buddhism, Jainism and the Indigenous Tribal Religions. In India, religious pluralism is an ancient reality. Each religious community has its own definite boundary, even geographical boundaries, its own rules and norms. In the midst of plurality, the country is well known for its religious tolerance and openness to all religions

### **Environmental Scenario**

The present day environmental scenario in India is quite disappointing. The issues of deforestation, land degradation, pollution and the scarcity of safe drinking water are still haunting the rural India. According to the *State of Environment Report India-2009*, —due to an uncontrolled urbanization in India, environmental degradation has been occurring very rapidly and causing shortages of housing, worsening of water quality, excessive air pollution, noise, dust and heat, and the problems of disposal of solid wastes and hazardous wastes.<sup>[47]</sup> Other environmental issues involve climate change, biodiversity loss, food security, water security, energy security (all environmentally connected issues).

Thus keeping in mind the context of India, CSR should be seen as more of an ethical business relationship motivated by solidarity rather than by philanthropy. It should concern the corporate sector reaching out to the society outside, in order to benefit both business and the social and physical environment from which it grows and within which it functions. It should reflect the Gandhian principle of developing the society, with a particular focus on the rural society. Corporations, through their

CSR programmes, should go beyond mere charity and donation and move towards improving the environment, empowerment and sustainable development. True development is development of people.

What has been discussed above is the ideal of CSR which is necessarily derived from the very concept of 'social responsibility'. An ideal remains an ideal. The ground reality, particularly in the developing countries, like India, is far from the ideal – far from the treasured Indian values. Let alone CSR activities, corporations have involved in crimes and scandals for profit at the cost of human lives. Daily environmental disasters (due to the company's activities) occur at the face of the local community that receives nothing but broken promises of CSR activities. Any intervention by civil society regarding environmental disasters is bound to fail on many occasions, due to the company's political connivance. Where CSR activities have been carried out, either they fail to sustain after the company leaves the locality or die down with the closing of the company. They have not been planned on a long- term basis. In the long run, it is in the self-interest of a few influential and powerful people of the area that the company operates, and its CSR activities are either falsely promised or carried out in a shoddy manner.

### **Environmental Aspects of CSR**

In this present day of emerging global economy companies are more frequently judged on the basis of their environmental stewardship.<sup>[48]</sup> CSR for environmental protection has become a necessity. The environmental aspect of CSR is defined as —the duty to cover the environmental implications of the company's operations, products and facilities; eliminate waste and emissions; maximize the efficiency and productivity of its resources; and minimize practices that might adversely affect the enjoyment of the country's resources by future generations.<sup>[49]</sup>

In India, renowned companies, such as the Tata Group, the

Birla Group, the Infosys Technologies, the Indian Oil Corporation, the Bharat Petroleum Corporation Ltd., Hindustan Universe Ltd., to name a few, have been engaging in far-reaching social welfare projects like rural community development, health, education, water management, environment protection, etc. as part of their CSR programmes. Their contribution in the field of development is invaluable seeing that the government has limited resources in tackling the socio-economic problems of the country.<sup>[50]</sup> If properly motivated more by community concerns (solidarity) and environmental responsibility than popularity and political affiliation, these corporations could well take a lead in the right direction in this long pathway towards CSR in India.

Under *The Charter on Corporate Responsibility for Environmental Protection (CREP)* adopted in March, 2003, eight task forces have been constituted for its effective implementation and for monitoring and providing guidance to the industries to adopt necessary pollution abatement measures.<sup>[51]</sup> This step could well be credited as a big thrust to corporate environmental responsibility, which is fundamental to CSR programmes.

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37. Elisabet Garriga and Dome`nec Mele, Corporate Social Responsibility Theories: Mapping the Territory 51 *JBE* (2004).
38. Traditionally, the goal of the corporation has been understood in economic terms, e.g., providing goods and services, creating jobs and maximizing profit. Gradually, stakeholders take a broader view of the purpose of the corporation, which includes not only economic ends, but also social and environmental concerns. (For instance, see C.V. Baxi and Nazy Chadha, —Corporate Social Responsibility: Concepts, Practice and Country Experiences in C.V. Baxi and Ajit Prasad (eds.), *Corporate Social Responsibility, Concept and Cases: The Indian Experience* 8 (Excel Books, New Delhi, 2005).
39. Supra note 30.
40. Supra note 32 at 21.
41. *Id.* at 4.
42. The Common Good here refers to goods in general that are rightfully used by everyone each in his or her own way; for example, the air in the skies, the water in the river, the clean environment, etc. [see also Dario Composta, *Moral Philosophy and Social Ethics* 162 (Theological Publications in India, Bangalore, 1988). John Rawls conceives of the common good as ‘certain general conditions that are in an appropriate sense equally to everyone’s advantage’. See John Rawls, *A Theory of Justice* 246 (Universal Law Publishing Co., New Delhi, 2011).
43. B. Kuppuswamy, *Dharma and Society* 16 (Macmillan, Delhi, 1977). According to this author, Dharma —stands for religious observance, righteousness, justice, conformity in law, conformity to custom, obedience to the social order, sense of duty, etc., and thus has religious, moral, ethical as well as legal significance.  
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47. Government of India, Report: State of Environment Report India-2009 (Ministry of Environment and Forests, 2009); See also Government of India, Report: Report to the People on Environment and Forests 2009-2010 (Ministry of Environment and Forests, 2010). It is relevant to note here the main features of the 2009 Report:
  1. About 45 percent of India’s land is degraded due to erosion, soil acidity, alkalinity and salinity, water logging and wind erosion. The prime causes of land degradation are deforestation, unsustainable farming, mining and excessive groundwater extraction. However, over two-thirds of the degraded 147 million hectares can be regenerated quite easily. India’s forest cover is also gradually increasing (currently about 21%).
  2. Air pollution is increasing in all its cities. The level of respirable suspended particulate matter (the small pieces of soot and dust that get inside the lungs) had gone up in all the 50 cities across India. The main causes of urban air pollution were vehicles and factories.
  3. India is using 75 percent of the water it can use, and it has just enough for the future if it is careful. Lack of proper pricing of water for domestic usage, poor sanitation, unregulated extraction of groundwater by industry, discharge of toxic and organic wastewater by factories, inefficient irrigation and overuse of chemical fertilisers and pesticides are the main causes of water problems in the country.
  4. While India remains one of the world’s 17 megadiverse countries in terms of the number of species it houses, 10 percent of its wild flora and fauna are on the threatened list. The main causes for this were habitat destruction, poaching, invasive species, overexploitation, pollution and climate change.
  5. About one-third of India’s urban population now lives in slums.  
India contributes only about five percent of the world’s greenhouse gas emissions that are leading to climate change. However, about 700 million Indians directly face the threat of global warming today, as it affects farming, makes droughts, floods and storms more frequent and more severe and is raising the sea level.
48. Piotr Mazurkiewicz, *Corporate Environmental Responsibility: Is a Common CSR Framework Possible?* available at: <http://siteresources.worldbank.org/EXTDEVCOMSUSD/EVT/Resources/csrframework.pdf> (Visited on March 28, 2012).
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51. Government of India, Report: Annual Report 2010-2011 (Ministry of Environment and Forests, 2011); the CREP was adopted in March, 2003 by the Ministry of Environment and Forests, Government of India, for seventeen categories of polluting industries and it is a road map for progressive improvement in environmental management.