

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CORPORATE SOCIAL CONTRACT; A NEW CONCEPT AND ITS RELATION WITH CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY

AUTHORED BY - NIKHIL A S

Assistant Professor

Kristu Jayanti College of Law

Bengaluru, Karnataka.

INTRODUCTION

Corporate Governance could be defined as the the process and rules under which a company is managed on the behalf of shareholders and stakeholders. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure. Corporate social responsibility (CSR) is a self-regulating business model that helps a company be socially accountable—to itself, its stakeholders, and the public. By practicing corporate social responsibility, also called corporate citizenship, companies can be conscious of the kind of impact they are having on all aspects of society, including economic, social, and environmental. But corporate social contract is relatively a new concept the earlier concept of social contract is intermingled with that of the corporate governance and corporate social responsibility. This research work deals with the connecting process that exists between corporate governance, corporate social responsibility and corporate social contract.

MEANING, SCOPE AND DEFINITION OF CORPORATE GOVERNANCE

Corporate Governance is a term that defines the processes, customs, laws, policies and institutions that direct the way in which the corporations act, administer and control their position. The primary aim of the concept of corporate governance is to ensure fairness, accountability and transparency among the companies. In short words, it is the system in which companies are

directed and controlled.¹

The scope of corporate governance has increased from time to time as the companies lay their grassroots deep and create a corporate world. Corporate governance do act as a medium to ensure that the companies no longer extend their autonomy to create a monopoly by restricting their powers. The scope of corporate governance can be determined the unconcerned factors which can affect the factors of the publically traded firms, which could be either external or internal. A lot of influences determine the scope of corporate governance to how far the scope has widened. The internal influences arise from within the company and external factors are those which would further be classified into private sector influences and public sector influences. The customers, competitors, shareholders, employees, union, bankers and financiers etc. being some examples of the private sector influences and trade practices, anti monopoly, labour and equal opportunities, arbitration courts etc. being the public sector influences.² It basically sums up how far the corporate governance has evolved as concept where the scope is wide. Thus the benefits of extending the scope being;

1. Better economic growth and more success rate of the company
2. Increasing the share price of the company
3. Build up the goodwill of the company
4. Lowers the cost of capital that is required for investment

MEANING AND SCOPE OF CORPORATE SOCIAL RESPONSIBILITY

The origin of corporate social responsibility can be traced back to the Roman laws in the early centuries where it mostly involved philanthropic work such as asylums, hospitals and orphanages. Later, in the seventeenth century corporations were seen as an instrument of social development by the English crown. By 1920's and 1930's , balancing the profit maximization was an issue raised by the business shareholders in the corporations for which they had to maintain a cordial relationship with the labor force , the community which lead to the concept that the managers have

¹ Report of the Cadbury Committee, The financial aspects of the corporate governance (ISBN 085258913,1992) para.2.6

² Turnbull.S, "Corporate Governance: Its scope, concerns and theories"(1997)PL 180

the duty to maintain the social relations of the company. When it reached the 1940's, the responsibility of the companies were in limelight that it was established as a norm. After the World War II, the concept of social responsibility was further enhanced. There were changing attitudes of corporate social responsibility and actions going beyond philanthropic activities. It was in 1953, Howard .R. Bowen introduced certain principles which would term down the set of responsibilities where he further postulated that a businessman's decesions and actions affect their stakeholders, customers and employees affecting their quality of life as a whole.³ Later in the 60's, it concentrated into academic research and theoretical focus and had a tangible impact on the society. Certain principles have been laid down by Reverand Leon S Sullivan, popularly known as the global Sullivan principles in order to protect the company's social, economic and political interests and make the company responsible for their doings.⁴

CORPORATE SOCIAL RESPONSIBILITY IN INDIA

India was the first country which made the corporate social responsibility mandatory. As per the Companies Law Amendment Act of 2013, companies having net worth of Rupees Five hundred crore or annual turnover of Rupees Thousand Crore or net profit of five crore in a financial year to spend at least 2 percent of the average net profits of the companies CSR policy.⁵ Also certain national voluntary guidelines has been laid down by the Ministry of Corporate Affairs regarding the Corporate Social Responsibility.⁶

³ Bowen HR, *Social responsibilities of the businessman*(1953),University of Iowa Press

⁴ Express our support for universal human rights and, particularly, those of our employees, the communities within which we operate, and parties with whom we do business Promote equal opportunity for our employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity or religious beliefs, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse Respect our employees' voluntary freedom of association Compensate our employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities Provide a safe and healthy workplace; protect human health and the environment; and promote sustainable development Promote fair competition including respect for intellectual and other property rights, and not offer, pay or accept bribes Work with government and communities in which we do business to improve the quality of life in those communities -- their educational, cultural, economic and social well-being -- and seek to provide training and opportunities for workers from disadvantaged backgrounds. Promote the application of these principles by those with whom we do business

⁵ Company Law (Amendment) Act, Section 135(1)

⁶ **Principle 1:** Businesses should conduct and govern themselves with Ethics, Transparency and Accountability

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle

Principle 3: Businesses should promote the well-being of all employees

Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized

Principle 5: Businesses should respect and promote human rights

Principle 6: Business should respect, protect, and make efforts to restore the environment

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible

Inter Relationship Between Corporate Governance and Corporate Social Responsibility

Corporate Social Responsibility of a company is a pivotal measure which would determine how well the company is being governed. Corporate social responsibility determines how the company is being responsible to the society; socially, economically and environmentally. When the stakeholder prospective became a part and parcel of the corporate social responsibility, the earlier phase of philanthropic notion of corporate social responsibility gradually shifted into stakeholder participation model. In India, even some objectives of corporate governance and corporate social responsibility are similar such as;

1. Being transparent so that the public trust and confidence are being rebuild
2. Establishment of a strong band reputation of the company
3. Establishing and maintaining a good relationship between the stakeholders and the company
4. Contribution to the development of the region where the company has been functioning
5. To maintain a strong market position by addressing the concerns of various stakeholders⁷

On the global perspective, as the number of corporate scandals increased alarmingly, some of them being the scandals associated with Enron, Worldcom and Lehmann brothers, have undermined the confidence of public as well as the investors alike. As a result of these scams, certain suggestion have been put forward in order to maintain the balance between the corporate governance and corporate social responsibility. Companies has to be more transparent and provide a timely and intelligible disclosure regarding the financial statements and disclosure practices. In order to ensure good governance of the company and assuring accountability, responsibility and transparency, managers of the company are more likely to implement corporate social responsibility practices. Large companies tend to have high level of systematic risk and hence companies will disclose corporate social information to reduce risks and reassuring the investors that the company has been governed well and is transparent enough with the social responsibilities.⁸

manner

Principle 8: Businesses should support inclusive growth and equitable development

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner

⁷ DP Verma, Raj Paul, "Relationship between corporate social responsibility and corporate governance" (2012) IOSR Journal of Business and Management pp.24-26

⁸ Jean Michael Sahut, Marta Peris Ortiz, Frederick Tualon, "Corporate Social Responsibility and Governance" (2019) Journal of Management of Governance pp.901-912

CORPORATE SOCIAL CONTRACT; AN EMERGING CONCEPT

THE CONCEPT OF SOCIAL CONTRACT

The concept of social contract emerged during the 18th and the 19th centuries. It is a theory which points out the relationship between the ruler and his subjects, defining the rights and duties of each. The earlier concept of this theory were born into anarchic state of nature with no rules or orders to control themselves. Then when reason came into place, a society was formed and as a result, a government there by which a contract came in to place between the ruling and the ruled.⁹ Originated in Greece, the idea was further developed by Englishmen Thomas Hobbes and John Locke and Englishmen Jean Jacques Rousseau. The theories even differed where some justified the sovereign and some were intended to protect the individual's rights. There was no government or law to regulate them, which resulted in oppression and agony. To overcome these hardships, two agreements were made;

1. Pactum Unionis

As per this agreement, people sought protection of their personal life and property. Subsequently, society was formed and people respected each other and lived in harmony

2. Pactum Subjectionis

As per this agreement, people pledged together and subjected to obey an authority and surrendered the whole or part of the freedom and rights to an authority. That particular authority granted them protection of life and liberty.

THE CONCEPT OF SOCIAL CONTRACT BY THOMAS HOBBS

The concept of social contract by Thomas Hobbes was first published on Leviathon, published in the year 1651. According to him, prior to social contract, men lived in a state of nature. Man's

⁹ Encyclopedia Britannica, Social Contract(18 March 2020)www.britannica.com/topic/social-contract accessed 18 March 2020

state of nature was of fear and selfishness. Man has a natural desire for security and order. In order to procure self protection and self preservation, man entered into a contract. For that purpose, he voluntarily surrendered all his rights and freedoms to some authority. This lead to the postulation of concept of ruler or monarch, who shall be the absolute head.

THE CONCEPT OF SOCIAL CONTRACT BY JOHN LOCKE

John Locke's state of nature is different of that from Hobbesian point of view. He says that state of nature is not as miserable as what Thomas Hobbes has postulated. His postulation is more concentrated on the property that state of nature being good and reasonable, the property was not secured. Man had all the liberty to choose his life as he sees best for himself. How ever, men did not have any license to do as he pleases. People are presumed to be equal in such a state of nature and equally capable of discovering and being bound by the state of nature. It could be said as pre political but not pre moral.

THE CONCEPT OF SOCIAL CONTRACT BY JEAN JACQUES ROUSSEAU

Jean Jacques Rousseau gave new interpretation to the concept of social contract. According to him, social contract is not a state of nature but a hypothetical construction for reason. Humanity faced some changes as time evolved. People began to live in families and division of labor was introduced. Subsequently, the concept of private property was invented by the people which, in the words of Rousseau, was a fall from grace from the state of nature. For this purpose, they surrendered their whole power not to an individual but to a community as a whole.¹⁰

THE CONCEPT OF CORPORATE SOCIAL CONTRACT

A company may have contractual obligations between different entities. It could be with the stakeholders, different units of the company and even with the employees of the company. Thus corporate social contract can be defined as the contract that has been entered into by the company and various entities associated with it where the company is bound to maintain a social relationship with them. The corporate social contract can be analyzed in various contexts. Some of them are;

1. Corporate Interests

In order to protect the interests of the company, various contracts would be entered by the company with that of different entities which would arise to some dilemmas. These dilemmas will enlighten the company on what solutions should be adapted to maintain a cordial social relationship between the various entities and the company. The dilemmas being;

I. Dirty Hands Dilemma

In this dilemma, the tensions between the individual stakeholders and the company is concerned.

II. Many Stage Dilemma

Corporate interest takes a main role in this dilemma. Corporate interest could be different from person to person and the interpretation would be different for each person. When the opinions among the society differ, there occurs a dilemma

III. Entangled Hands Dilemma

Entangled Hands Dilemma is the problem that arises when there is a conflict of opinion between the manager and employee. Their interests may differ which leads to chaos.

2. Contract in terms of business context

Where there are conflicting interests in a corporation in one hand, there is also an inter relationship between these interests. For determining these interests, two models have been postulated; one the market model and the next one being the contract model. Market model provides that despite the conditions prescribed, a balance between morality and self interest will ensue itself. Contract model resolves the tension between self interest and morality. In this model, the parties are free to enter into a contract and the problems between them will be solved in mutual interests through an agreement. Thus the contract model is actually brought up as problem solving effort between the different players of a company.

3. Corporation as a citizen

The presumption of a company being in the same status as that of a citizen plays an important role in defining the concept of corporate social contract. The company is bound to contribute to a society. As it may vary to the interests of that of the society, the company has the responsibility to maintain a cordial balance between itself and the public. This will be achieved if the company ensures that there is a mutually responsible social contract between the company and the society where company takes up the role of a citizen and functions as such.

CORPORATE SOCIAL CONTRACT AND CORPORATE GOVERNANCE

Corporate social contract and corporate governance are two concepts in which the former plays an essential role in the proper functioning of the latter. The concept of social contract that has been la can be interlinked on showing how far the term of corporate governance has been evolved in terms with corporate social contract.

The term company or the institution of company has evolved from time immemorial. During the Roman Period, they were not having a very wide concept of a legal person or a corporation. There were not even stocks or bonds and real estate was rarely put up for sale. Thus, the state of nature of men was free and although commerce in Rome flourished, there was no authority which would be taking care of it. Thus for the self interest and benefit of their own cause, merchants were just concerned about themselves and not much responsible to the society or the people they are engaging in a trade within. This period can be compared to the state of free nature in the social contract. Later the concept of institutionalization and that of a corporation came into prevalence. In England, for merchant advertising to do on overseas, the organizations were called companies. Later, the East India Company came into establishment. But, a statutory corporate firm was first bought into public scenario was by United Kingdom, when they enacted the Bubbles Act in 1720. Later in United States of America, many statutes came into prevalence, namingly the Joint Stock Companies Act, 1844, the Limited Liability Act of 1855 and the Companies Act of 1862. A series of statutes followed where as of now the Companies Act of 1948 is being followed in England. In India, the Companies Act of 1956 was the first legislation post independence where the previous control and establishment of the companies were controlled by the East India Company. From the perspective of the corporate social contract, the company became under the authority of a statute where from a free state of nature, was bound under statutory protection. Thus, protection or preservation of the right of a person where the rights has been surrendered to the authority as postulated by Thomas Hobbes in his social contract theory, the companies binds under the statute and be under their surveillance so that they would be eventually protected in case of any mishap. And to govern the company in a fair and transparent manner, these statutes have to be abided accordingly. Thus corporate social contract is interlinked with the concept of corporate governance.

CORPORATE SOCIAL CONTRACT AND CORPORATE SOCIAL RESPONSIBILITY

Corporate Social Responsibility is the concept where companies are responsible to the society for which they have to ensure that they responsibly interact with the society in terms of social, economical and environmental responsibilities. It, in terms of contract, is an interaction between the society where by which the company has more liability and responsibility to meet when there is more interaction with the society. Prior start of the corporate social responsibility was for the purpose of philanthropic activities which later was made within the ambit of social responsibility. Corporate social contract and corporate social responsibility can be interlinked on how corporate social responsibility can be seen as a contract between the company and the society. Comparing with the evolutionary perspective of the social contract theory of Hobbes, Locke and Rousseau, social responsibility was a discretionary but not mandatory from the part of the companies to abide to it. From time to time, many principles and conventions have been put in force regarding the importance of corporate social responsibility; a few of them being United Nations Global Compact¹¹, Sustainable development goals¹², Brundtland report¹³, Johanassberg declaration on health and sustainable development etc. Corporate social responsibility can be narrowed down as a contract between the company and various facets of the society. Corporate social contract can be seen as a contract that has been made between the society and the company where there is a quid pro relationship. In Shell Case¹⁴, it was held that company should recognize five areas of responsibilities which include responsibilities to shareholders, customers, employees, business partners and societies at large. This, in perspective of a social contract, can be taken up as an agreement where there is a moral obligation from the part of the company to maintain a responsible contractual terms between the company and the entities associated with it. Moving on to the evolutionary background of corporate social contract interlinked with corporate social responsibility, at the earlier stages of the corporate social responsibility, where it was more oriented to philanthropic work, there was no mandatory provisions to contribute some amount for the cause of social responsibility, it could be compared to the state of nature with no rules or order.

¹¹ Principle 9- Businesses should encourage the development and diffusion of environment friendly technologies

¹² Sustainable Development Goal 9- Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation; Sustainable Development Goal 16- Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and provide effective, inclusive and effective institutions at all levels

¹³ Brundtland. G.1987. Report of the World Commission on Environment and Development: Our Common Future. United Nations General Assembly Document A/42/427

¹⁴ Okpabi and others .v.Royal Dutch Shell pic and another Civ Case no A1

Later people gathered together and formed societies which can be compared to the formation of corporations. Later, as per the “pactum subjectionis” principle laid down in the social contract theory, where an authority came and people surrendered their rights to it, in this case, it being the statutes, principles and the conventions. Corporate Social Responsibility can be moreover related to Jean Jacques Rousseau’s version of social contract where the powers have been surrendered by the people to the community as a whole. Here, the company limits its powers and extends the notion of responsibility to contribute to the community at large a benefit from their shares so that the community will be benefited. In return, the community will protect the interests of the company by aiding in their functioning process and increasing their brand name.

CORPORATE SOCIAL CONTRACT; GLOBAL SCENARIO

During the modern industrial era at the beginning of the 19th century, the influence of the joint stock corporations with limited liability boomed as a new social order was shaping up. Earlier industrialists such as Carnegie, Rockefeller and Melon laid the foundation of the modern corporations. The concept of social contract was a part and parcel of the United States constitution. It includes infringement of rights of other members, to obey just laws, to comply with and enforce contracts, to serve on juries and defend the community. Generally, the corporate social contract is implemented through 3 major ways;

1. Abiding The Norms

The company tries to validate their reason for being abiding to the norms; for example the ILO Declaration on principle rights at work, the UN Global Compact ,the OECD guidelines for multinational enterprises, Corporation 20/20 and Purpose of corporation project being some which the company portrays that they abide by. Thus it creates an inherent responsibility within the company and the public that beyond self interest the corporations work together to abide the rules and regulations.

2. Creating a new long term wealth

Companies tend to create a long term wealth where the pronouncements of the company will be static without any addition so that they tend to observe how the public reacts to it. By such observance, they tend to extend their business principles to the public and create a long term contract with the society if it is adaptable and acceptable by them

3. Expanding the Partnership and alliances

A company alone should not be the primary provider of social goods. There must be multitude of alliances such as computer literacy, health services and job retraining mechanisms. Hence, there occurs a social contract where for certain procurements the company is submitting some of its responsibilities to the allies. The corporation will have better access to the public goods rather than being part of the government. Three major factors are responsible for this.

- a) Innovation and management skills of the companies
- b) Local knowledge and trust associated with citizens
- c) Policy frameworks that encourage promising partnerships outsourcing the government

CORPORATE SOCIAL CONTRACT IN INDIA

The company legislation in India is closely followed by the company legislation in England. The first legislation that was passed regarding companies law was the company's act of 1844. Later, the concept of limited liability was introduced in the Companies Act of 1857. Later, in 1866, the companies act was passed for consolidating and amending the act. It was continued till 1913. Later the Companies Act came which was further amended on 2013, which is the present legislation in India. There were amendments in between the period; the major ones being the First and Second amendment of 2002.

The concept of social contract has been mentioned in a plethora of Judgments. In *Jilubhai Nanabhai Kachar and Others .v. State of Gujarat*¹⁵, the Court interpreted the Right to Property Under Indian Constitution within the ambit of theory of social contract, where the social contract theory involved protection of the property with recognition of the power of the ruler to act in public interest or emergency and compared it with the Constitutional provision where the Court interpreted constitutional right of property in India is treated as inviolable except for law of public good and on payment of compensation.

In *IC Golaknath .v. State of Punjab*, it was held that the Directive Principles of State Policy is in terms with the theory of social contract which enjoins to bring about a social order in which justice;

¹⁵ Appeal(Civil) 2211-15 of 1994

social, economical and political and social contract theory acts a pathway to do so.¹⁶

In *Ashwani Gupta .v. Government of India and Ors.*, it was held that social contract establishes legal equality and encourages minimum restriction of individual's freedom by state.¹⁷

In *Indira Nehru Gandhi .v. Raj Narain*,¹⁸ it was held that social contract is a means of achieving welfare in a society composed of individuals.

In a plethora of judgments, it has been defined how the concept of social contract is inter related with the Constitution and how it amounts to public welfare and social order. Although not expressly defined in any statute, the concept of corporate social contract can be read down with the various aspects mentioned down in the Companies Law (Amendment Act of 2013). The provisions of public offering mentioned in the companies act can be termed down as corporate social contract; where the company tries to raise funds by issuing it to the public. Again the concept of Jean Jacques Rousseau comes into place where the power of the company is being submitted to the community as a whole. The interpretation of the term authority in the concept of social contract can also be laid down in the issuing of shares where the share holders with preference shares has the right to get the payment of the dividend , whose payment takes priority of the ordinary shares. There is a social contract that has been entered up between the share holders where the authority is vested more within the preference share holders.

The Board of directors and the Key managerial personnel also becomes the part of the social contract where company is taken as a community and the powers have been vested within the authorized personnel under them elected by the community

The concept of corporate social responsibility being mandatory in the Companies Law (Amendment Act) of 2013 can also be interpreted with in the meaning of corporate social contract, where the company as a whole is involving as a part of the community and aiding them in the process by being responsible to the society as whole, socially, politically and environmentally.

¹⁶ 1967 AIR 1643

¹⁷ 2006 ACJ 1901

¹⁸ 1975 SCR (3) 333

CORPORATE SOCIAL CONTRACT AND STAKE HOLDER THEORY

STAKEHOLDER THEORY

The theory focusses on the view of capitalism that defines the interconnected relationships between a business and its consumers, supplies, investors and others who have a stake in the organization. In 1984, Edward Freeman detailed the stakeholder theory. It says that the stakeholder ecosystem, the theory says, involves anyone invested and involved in within the meaning of stakeholder system, which includes every political groups, governmental organizations, communities and so on.

BENEFITS OF STAKEHOLDER THEORY

The stakeholder theory has the following benefits;

1. Impact on employees and customers

One of the advantages of stakeholder theory is it includes greater productivity across the organization. If employees feel that they are being valued, they tend to work more.

2. Increase in investment

Investors, being the stakeholders, invests more if they find substantial advantage while joining hands with the company. As the value of company grows and investors are connected with the other company, they are more likely to add advantage to the production of the company.

3. Ethical Benefits

More than moral benefits, there are profits derived from the company. Companies find the mental workforce increased as their job satisfaction is increased

DRAWBACKS OF STAKEHOLDER THEORY

There are certain drawbacks for the stakeholder theory.

1. Conflict of interests

Various stakeholders have various interests which may not go hand in hand with the interests of the others, which will lead to conflicts

2. Power levels and influence of stakeholders

The power levels and the influence of stakeholders may differ as seeming the most powerful ones would not have the power to influence the others. Thus, it may amount to chaos.

STAKEHOLDER THEORY AND CORPORATE SOCIAL CONTRACT

The stakeholder theory has been seen as always contradicting a social contract approach on business ethics. Friedman has made two approaches regarding the social contract in relation with stakeholder theory. They are:

1. Macro social contracts
2. Micro social contracts

Macro social contracts consists of norms that consist of universal values. These norms should be obeyed by everyone in all circumstances. Micro social contracts should be in conflict with the macro social contract.

Micro social contracts must be acceptable to the clear majority of the community. When single individuals disagree with the norms of the community, they have the rights to leave it. It reflects a community's particular goals, environment, resources etc.

Friedman's definition of managers are also of two categories; one being the deontological norms and second the normative obligation of the stakeholder expectation to maximize profit. Deontological norms are comparable to hyper norms because they likewise apply to all corporate executives independently of the particularities of the company they manage. As a consequence, managers are obliged to fulfill certain set of obligations.

The social contract theory and Friedman's approach are remarkably similar. Managers need to obey the universal hyper norms of the macro social contract and community specific norms of various micro social contracts. Therefore, the latter should not violate the former. A similar relationship occurs between the de ontological norms and the normative obligation of the stakeholder expectation, which are crucial for profit maximization.

The stakeholder theory is in conflict with the concept of social contract postulated by Friedmann because the interests of stakeholders may differ and may not be in terms with that of the other stakeholders. Reaching them to a consensus and proceeding them further for the purpose of attaining corporate social contract is a complex dilemma and is hard to achieve considering the circumstances.

CONCLUSION

Social contract is concept that has been in prevalence for ages. It has evolved through various philosophers such as Thomas Hobbes, John Locke and Jean Jacques Rousseau actively has said about how the concept of social contract and how it has evolved from time to time. It mainly talked about how a general will is being transferred to a community as a whole from a free state of nature. The institutionalization of company evolved years later and then arose the concept of corporate social contract. Even though there is no express definition of the term corporate social contract in any Indian statutes or statutes elsewhere, various general concepts that has been used for the purpose of governing a company can be interlinked with the term corporate social contract. The concepts such as corporate governance and corporate social responsibility being the two important terms and concepts that could be linked with corporate social contract. While interpreting various provisions of the Companies Law (Amendment Act), 2013 and the decisions made by judiciary, the concept of how far the corporate social contract has evolved can be summed up. The research also points out that corporate social contract does not go hand in hand with the stakeholder theory as they have conflicting interests. The hypothesis of corporate social contract being a good parameter to check the well functioning of corporate governance and corporate social responsibility is hence proved but it has to be interpreted with the functioning and analysis of those concepts. Thus, corporate social contract is a highly philosophical concept which checks how far the company is involved with the society and their responsibilities and benefits henceforth.

BIBLIOGRAPHY

PRIMARY SOURCES

STATUTES

The Companies Law (Amendment) Act, 2013

Working Time (Amendment) Regulations 2001

Race Relations Act (Statutory Duties) Order 2001

Disability Discrimination Act 1995 (2005)

The Companies Act, 1844

The Limited Liability Act, 1855

Companies Act, 1862

The Companies Act, 1956

CASE LAWS

Shell oil Co. v. Canada (Commissioner of Patents)

Pepsi Co., Inc. And Ors .v. Hindustan Coca Cola Ltd. And Anr

Wallmart v Dukes

Jilubhai Nanabhai Kachar and Others .v. State of Gujarat

Ashwani Gupta .v. Government of India and Ors

Indira Nehru Gandhi .v. Raj Narain

SECONDARY SOURCES

ONLINE ARTICLES

Kaptain MJ Wempe, *The Corporation As Social Contract* (SSRN Electronic Journal 2002)
<<https://www.researchgate.net/publication/228133194>> accessed 6 February 2020

Imao O, *Corporate Social Responsibility, Social Contract, Corporate Personhood And Human Rights Law: Understanding The Emerging Responsibilities Of Modern Corporation* (Australian Journal of Legal Philosophy 2008)
<http://researchgate.net/publication/228284344_Corporate_Social_Responsibility_SocialContract_Corporate_Personhood_and_Human_Rights_Law_Understanding_the_Emerging_Responsibilities_of_Modern_Corporations> accessed 7 February 2020

Mannar B, 'Corporate Governance And Corporate Social Responsibility: The Indian Context' (2020) 9 International Research Journal of Research Art and Commerce
<<https://www.researchgate.net/publication/327052615>> accessed 8 February 2020

Friend C, *Social Contract Theory* (Internet Encyclopedia of philosophy)
<<https://www.iep.utm.edu/soc-cont/>>

Steib J, *Assessing Freeman's Stakeholder's Theory* (3rd edn, Springer 2009)
<https://www.jstor.org/stable/pdf/40294933.pdf?ab_segments=0%2Fbasic_SYC-4946%2Fcontrol&refreqid=search%3A526051c1e4c7fedecfc2e04300c1e557> accessed 8 February 2020

Seema Sharma, *Corporate Social Responsibility In India- The Emerging Discourse & Concerns* (4th edn, Indian Journal of Industrial Relations 2020)
<https://www.jstor.org/stable/pdf/23509816.pdf?ab_segments=0%252Fbasic_SYC-4946%252Fcontrol&refreqid=excelsior%3Ad4f4a97974bfab73ee72080976dc4124> accessed 8 February 2020

WEBLIOGRAPHY

www.jstor.com

www.heinonline.com

www.ssrn.com

www.mca.in

<https://www.academia.edu/>

