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Corporate Social Responsibility: A Constitutional Discourse *An Alternative Argument for Corporate Social Responsibility*

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ABSTRACT

This paper examines, on theoretical as well as on Constitutional basis, Corporate Social Responsibility, and tries to locate its basis in our constitutional ideals, and thereby it will provide an insight of 'Constitutional Discourse' for CSR. It makes a literary attempt to summarize idea of Corporate Social Responsibility and explores 'constitutional ideals', 'goals for the nation', and the 'means' to achieve those ideals and goals. It provides an 'alternative argument' for promoting CSR as a duty/service 'towards the nation' as provided under Article 51A of the Constitution of India. This 'alternative argument' tries to symbolize idea of 'corporate-citizenship' in its truest sense. It tries to encapsulate CSR in terms of promoting 'fraternity', a vision of the Constitution, as declared and pledged in the Preamble. Part 5th discusses the futurology of CSR, and all other incidental matters including summations.

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Introduction

*Corporations are not responsible for all the world's problems, nor do they have the resources to solve them all...but, a well run company can have a greater impact on social good than any other institution or philanthropic organisation*¹

The conventional idea proclaims that 'state' is the only player when it comes to provide socio-economic welfare to the masses, and to create opportunity for equal development of each section of society. Modern thinkers have not only rejected this traditional model of development but they have prescribed new thoughts also, and have argued for entry of new players in the process of development.² These players are non-state actors, like, 'NGOs', 'civil societies', and 'business-entities', such as, 'corporations', 'companies', and 'business firms'. This idea is mooted with a change in perceptions of doing-business. It is strenuously argued by many that fundamentals of business ethics not only include ethical concomitants of 'doing business', but also encompasses all ancillaries to 'doing business'. These ancillaries include strategizing 'doing businesses' in terms of contributing towards social development, and thereby creating better space and good-will. This idea has later on taken shape in the form of 'Corporate Social Responsibility' (hereinafter referred as CSR).

CSR is often described as an idea where corporation/companies and other business entities are supposed to perform and contribute in 'social functions', and thereby providing greater welfare to the society. It is believed that duty of CSR is neither against the very fundamental rule of game dealing with corporate functions, nor, it violates 'freedom of market'. Thus, CSR is not only good and ethical in terms of 'doing businesses', but, also propagates constitutional ideals.

This paper examines, on theoretical ground, the idea of CSR, and tries to locate its basis in our constitutional ideals, and thereby it will provide an insight of 'Constitutional Discourse for CSR'. For convenience of readers, the work is divided into sub-parts. Part- 1st makes a literary attempt to summarize idea of Corporate Social Responsibility. Part 2nd explores 'constitutional

ideals', 'goals for the nation', and the 'means' to achieve those ideals and goals. This section puts limits to its arguments by locating these goals and ideals as enshrined in Part IV of our Constitution. Part 3rd provides an 'alternative argument' for promoting CSR as a duty/service 'towards the nation' as provided under Article 51A of the Constitution. This 'alternative argument' tries to symbolize idea of 'corporate-citizenship' in its truest sense. Part 4th tries to encapsulate CSR in terms of promoting 'fraternity', a vision of the Constitution, as declared and pledged in the Preamble. Part 5th discusses the futurology of CSR, and all other incidental matters including summations.

Part- 1st: Idea of Corporate Social Responsibility

Defining CSR—

A further research is required to find out the detail history of CSR making its way in present day business patterns. However, in early writings on CSR, it was referred to more often as 'social responsibility' (SR) than as CSR. Perhaps this was because the age of the modern corporation's prominence and dominance in the business sector had not yet occurred or been noted.³ The publication by Howard R. Bowen, in the year 1953, of his landmark book *Social Responsibilities of the Businessman* is argued to mark the beginnings of the modern period of literature on this subject.⁴ CSR, in that work was argued on the basis of belief that 'the several hundred largest businesses were vital centers of power and decision making and that the actions of these firms touched the lives of citizens at many points'.⁵ Giving definitional structure to CSR, Bowen had said:

*"It refers to the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society"*⁶

Though, Bowen himself argued that CSR is no panacea of all the ills, later writing on CSR dominated social responsibility approach of Bowen.⁷ Later 60s attracted many other scholars towards this field; the most prominent of them is Keith Davis. Davis set forth his definition of social responsibility in an article

by arguing that it refers to “*businessmen’s decisions and actions taken for reasons at least partially beyond the firm’s direct economic or technical interest*”.⁸ Davis argued that social responsibility, though ‘a nebulous idea’ but should be seen in a managerial context. Furthermore, he asserted that some socially responsible business decisions can be justified by a long, complicated process of reasoning as having a good chance of bringing long-run economic gain to the firm, thus paying it back for its socially responsible outlook.⁹ Davis became well known for his views on the relation between social responsibility and business power. He set forth his now-famous “Iron Law of Responsibility,” which held that “*social responsibilities of businessmen need to be commensurate with their social power*”.¹⁰ He further contended that ‘social responsibility and power were to be relatively equal’, otherwise ‘avoidance of social responsibility leads to gradual erosion of social power’, and will destroy business pattern.¹¹

Thomas Donaldson characterizes CSR as a global social contract, obliging companies to behave in a morally and socially acceptable manner in exchange for access to the international market.¹² For others, the answer involves paying workers a living wage, keeping reasonable hours and labor conditions, and respecting the human rights of local stakeholders.¹³ For still others, the answer is as broad as being a respectful citizen and re-investing some profits in the local economy or education system.¹⁴ CSR, in its broadest sense, simply asks companies to consider both the social and financial impacts of their decisions.¹⁵ This idea can be encompassed by the term “triple bottom line,” which has become something of a cliché, but at its core exhorts companies to consider social, environmental, and financial outcomes collectively.¹⁶

William C. Frederick was another contributor towards greater definitional understanding of CSR. According to Frederick, for business corporations:

‘Social responsibilities mean that businessmen should oversee the operation of an economic system that fulfills the expectations of the public. And this means in turn that the economy’s means of production should be employed in such a way that production and distribution should enhance total socio-economic welfare.’
*‘Social responsibility in the final analysis implies a public posture toward society’s economic and human resources and a willingness to see that those resources are used for broad social ends and not simply for the narrowly circumscribed interests of private persons and firms.’*¹⁷

Joseph W. McGuire provided more subtle argument in favour of CSR, and has stated that “The idea of social responsibilities supposes that the corporation has not only economic and legal obligations but also certain responsibilities to society which extend beyond these obligations”¹⁸ In his book titled ‘Corporate Social Responsibilities (1967)’, Clarence C. Walton, wrote CSR as a *new concept of social responsibility recognizes the intimacy of the relationships between the corporation and society and realizes that such relationships must be kept in mind by top managers as the corporation and the related groups pursue their respective goals.*¹⁹

The basic criticism of corporate social responsibility from the right was outlined by Milton Friedman in a famous New York Times Magazine article. The article’s title neatly encapsulates its thesis: “The Social Responsibility of business is to increase its profits.” In its opening lines, Friedman asks and responds to the following question:

What does it mean to say that “business” has responsibilities? Only people have responsibilities. A corporation is an artificial person and in this sense may have artificial responsibilities, but

*“business” as a whole cannot be said to have responsibilities, even in this vague sense. The first step toward clarity in examining the doctrine of the social responsibility of business is to ask precisely what it implies for whom.*²⁰

Friedman concludes that the idea of social responsibility means nothing for businesses; in fact, since CSR spending involves managers “taxing” shareholders and spending their money without their consent, it is actually an immoral business practice.²¹

Taking some ideas from very nature of business and inherent ‘contract’, the Committee for Economic Development (CED) in 1971, propounded that “business functions by public consent and its basic purpose is to serve constructively the needs of society—to the satisfaction of society”.²² The CED noted that the social contract between business and society was changing in substantial and important ways by assuming ‘broader responsibilities to society’ and to ‘serve a wider range of human values’ and they are not limited. In effect, they are being asked to contribute more to the quality of life than just supplying quantities of goods and services.²³

In the early 90s, many scholars started defining CSR in typical limit of business and restricted it in the line of Friedman and provided alternative theories for explaining CSR. Few writers who wrote extensively on this issue were Donna J. Wood, Wartick, Cochran, and others. The alternative idea was more deepening the concept as reflected the statement that *‘the CSR firm should strive to make a profit, obey the law, be ethical, and be a good corporate citizen’*.²⁴

Why CSR?—

The idea of CSR may be related with general idea of welfare that all individual, being part of society must actively participate in the overall welfare of the society. This argument is generally based on the assumption that capacity and reach of any system in doing welfare is always ‘limited’. Even ‘state’ for that matter is considered limited in providing adequate welfare mechanism, and that’s the reason that state allows private players in providing welfare means such as health, education, insurance and other welfare needs. This presumption essentially demolishes the very argument that ‘every work of a private player, in given market is only profit oriented’. In fact, when state permitted these players, operating their business concerns in the open market, the permission should be deemed to be ‘limited’ in the sense that such permissions are towards larger welfare, and this must be taken as another instrument in doing or achieving what state endeavors to achieve. Thus, in this larger sense, ‘doing businesses is another method of serving people and society’, and all individual/personal ‘profit’ arising out of such welfare work is simply a ‘windfall’.²⁵

Idea of Business—

Michael Hopkins opined that CSR is concerned with treating the stakeholders of the firm ethically, or, in a responsible manner. ‘Ethically’ or ‘responsible’ means treating stakeholders in a manner deemed acceptable in civilized societies. ‘Social responsibility’ includes economic responsibility. Stakeholders exist both within a firm and outside – the natural environment is a stakeholder. The wider aim of social responsibility is to create higher and higher standards of living, while preserving the profitability of the corporation, for peoples both within and outside the corporation.²⁶

Corporate Philanthropy – or - Corporate Social Responsibility – is becoming an ever more important field for business. Today’s companies ought to invest in corporate social

responsibility as part of their business strategy to become more competitive.²⁷

Part-2nd: Constitutional Structure and CSR

Constitutional Model of 'Doing Business'—

Constitution of India provides adequate protection of basic liberties to all, not only to the individuals but also to groups.²⁸ These liberties and protections are assured to 'natural' and 'non-natural' persons equally.²⁹ These rights are not without duties. By an amendment of the constitution, Article 51A was inserted in the Part IV, and thereby Fundamental Duties were casted on citizens.³⁰ This provides duties of every citizen of India 'to abide by the Constitution and respect its ideals and institutions,'³¹ 'to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities,'³² 'to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures,'³³ 'to develop the scientific temper, humanism and the spirit of inquiry and reform',³⁴ and finally 'to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.'³⁵ Constitution provides certain schemes under which 'state' and 'individual', both, are supposed to perform their duties.

Apart from these duties, the state is asked to create policy endeavoring to achieve various objectives laid down under part IV of the Constitution.³⁶ Constitution mandates the 'state' to 'strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life'. State is specifically asked to 'minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.'³⁷ Similarly, Constitution also promises that 'the citizens, men and women equally, have the right to an adequate means of livelihood'³⁸, 'the ownership and control of the material resources of the community are so distributed as best to subserve the common good'³⁹, and finally it maintains that 'the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment'⁴⁰. State has been asked that 'it shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want'⁴¹.

'Rights' and 'duties', and their *jural* correlations are now established principles for interpreting legal documents. The above stated duty with that of accepted policy guidelines for state makes it crystal clear that all efforts either by state or by individual, under their bounden duties, must strive to achieve these common goals. It is quite clear that the objectives laid down in this part of the constitution are not for the 'state', but for individuals as well.

The idea of 'right' invites certain 'duty', and it is now an accepted philosophy that 'right of one, comes with inseparable duty to recognise and respect the similar rights of others. This aspect goes further, and it is often argued that 'right' of one should not be exercised in such a fashion that it may tend to violate 'rights' of the others. Finally, when 'state' guarantees such 'rights' to individual, then, why an individual is not asked

to maintain the idea, concept and idealism of 'state', meaning thereby helping the 'state' in achieving what it sought to achieve.

Thus, if 'state' has guaranteed all individual 'fundamental right' to '*freedom of trade and profession*'⁴², the same should be subjected to overall economic social policies laid down in the constitution itself. In fact, the whole idea of 'state' and 'state' sponsored welfare would be futile if individual, enjoying their social, economic and political liberties, fail to assist 'state' in its strive for greater societal welfare. In fact, reading too rigidly, the fundamental freedom of trade and profession itself has inbuilt restriction on the basis of '*interests of the general public*'.⁴³ However, if 'state' is going to provide CSR in the form of compulsory and obligatory business model with the help of law, then such model may be said to be violative of freedom of trade and profession, and also may be said to be destructive of 'free market theory'. It is with this idea that CSR may be helpful in only allowing the industries to participate in the developmental process but also such participation would be without any coercive mechanisms on part of 'state'.

Alternative argument for CSR is based on constitutional idealism of 'fundamental duties' as stated above. Careful scrutiny of the list of duties provided in the constitution would suggest that every citizen is under duty to observe with those pledges. In *National Textiles Workers' Union etc. v. P.R. Ramkrishnan*,⁴⁴ the constitution bench per majority held that the socio-economic objectives set down in the directive principles of the Constitution should guide and shape the new corporate philosophy. The management of a private company should show profound concern for the workers. The socio-economic justice will inform all the institutions of textiles in the nation to promote fraternity and dignity of the individuals. Similarly, the apex court in *Consumer Education & Research Centre v. Union of India*⁴⁵, 'right' of the management in asbestos industry to carry on its business is subject to their obligation to 'protect health of the workmen', 'preserve pollution free atmosphere', and to 'provide safe and healthy conditions of the workmen'. Making an emphatic declaration about role and position of Directive Principles for State Policy, the apex court in *LIC of India v. Consumer Education and Research Centre Anr.*,⁴⁶ has stated:

The authorities or a private persons or industry are bound by the directives contained in part IV, Part III and the Preamble of the Constitution. It would thus be clear that the right to carry on trade is subject to the directives containing the Constitution the Universal Declaration of Human Rights, European Convention of Social Economic and Cultural right and the Convention on Right to development for socio-economic justice. Social security is a facet of socio-economic justice to the people and a means to livelihood.

One obvious word of caution is required here. The meaning of word 'citizen' as used in Article 51A, does this word include 'companies' and 'incorporated persons' as well? Supreme Court of India has already delved with this aspect, and has held that for the purpose of part 3rd of the constitution and particularly Article 19, Citizen does not include incorporated/legal person.⁴⁷

Benjamin Cardozo has stated in his "Judicial Process" that '*the great tides and currents which engulf the rest of men do not turn aside in their course and pass the Judges idle by*'. Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge. *If it is shown that the exercise of power is arbitrary, unjust, and unfair,*

it should be no answer for the 'states its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simplicitor, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons.

In *Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay*⁴⁸, it was held that the Corporation must act in accordance with certain constitutional conscience, and whether they have so acted must be discernible from the conduct of such Corporations. Taking a clue from *Kumari Shrivlekha Vidyarthi v. State of U.P.*⁴⁹ where Supreme Court has pointed out that the private parties are concerned only with their personal interest but the public authority are expected to act for public good and in public interest. The impact of every action is also on public interest. It imposes public law obligation and impress with that character, the contracts made by the 'state', or its instrumentality. In fact, court tried to find out 'impact analysis' to define and limit the liabilities of state instrumentalities in public domain.

In *Sterling Computers Ltd. v. M & N Publications Ltd*⁵⁰, it was held that even in commercial contracts where there is a public element, it is necessary that relevant considerations are taken into account and the irrelevant consideration discarded.

Cases like *Bears Cave Estate v. The Presiding Officer*⁵¹ in which the Madras High Court had made direct observation that 'the principles behind suffering a person with disabilities are that providing equal opportunities cannot be left only for the mercy by the Government in relation to its servants alone. It is high time the principles behind the Disabilities Act, 1955 must be extended in relation to private employments also and it must be made as part of Corporate Social responsibility of every employee'.

Part 3rd: Towards 'Corporate Citizenship' and 'Public-

Trust' Doctrine

The idea of 'doing-businesses' is always gripped with few fundamental questions. Apart from providing capital, resources, and raw-materials, modern day's business strategies clearly outlines about various preconditions which affects establishment, growth and sustainability of corporate structures in given region, and its relationship with the other socio-political and economic factors. These fundamental questions become more intrigue when they are examined in developing countries where poverty, inequality and economic backwardness are more visible. Here, growth of business may have inbuilt resistance from some sector of society who often see this development as nothing but growing inequality! How to tackle, even if theoretically, such resistance? No state can protect business entities and ensure that these developments will not be seen as mark of 'inequality'. Thus, sustainable business model requires not only capital and resources but also a clear and satisfactory answer to these threats.

India, on its path of industrial development is facing acute problem of social and political acceptability and legitimization. Since, opening of Indian market for the foreign players and accepting norms of liberalization, privatization and globalization, many a times protest were launched either against such policies or opening of a new venture in far-flung areas.

Though such agitations might be at time seems well, but, either they were not so rampant, or their impact might be low due to limited role of corporate sector in the society. However, in recent times, due to expansion of their role and their reach in the market as well as society, these issues have become more visible. The recent example is agitation against POSCO's new venture in Odisha. Similar agitation at Singur in West Bengal had also attracted many. The one obvious question which arises here is about why this industrialization is unacceptable to one or the other section of society? What are their fears and apprehensions? Does this agitation is symbolic and very much limited to their ideological contrasts, or, this is rooted in some other problems? Another aspect which requires serious exploration is why some of these ventures are happily welcomed in other parts of the country as Maharashtra, Gujarat or southern part of country?

Be what it may, one thing is sure that the socio-political acceptability of industrialization is equally important as like economic viability and profitability. In this reference, we have to re-examine the factors affecting industrialization process, and these industries can in any way do something to reduce the frictions coming in this process.

It may be worthwhile to note that process of industrialization, and to some extent people involved in such process, has always been subject matter of greater scrutiny in relation to their interference in the democratic process. It will not be too farfetched argument to say that corporate families and political governance were depicted as sworn competitor of their own values. This has affected the political system and the corporate culture, both, badly. It is in this reference that CSR may play as bridge for greater socio-political acceptability and normative legitimization to the present corporate bodies.

Business and Society: Inseparable Relationship

Business and society are interdependent. Separation of these two things is not only impractical but also disastrous. Business and services develop due to increasing demands of goods and services from the society; and it is society which provides forum for flourishing of business. It is in this respect that one may argue that business owes some responsibility and accountability to the society. Further explanation of this idea is reflected in the notion of doctrine of 'trusteeship' where it is argued that 'exploitation of resources, goods/services has its inbuilt limitation of fulfilling the needs of society'.

Mohandas Gandhi, while explaining his idea for future developmental model has observed about the future in the following words:

*"I desire to end capitalism almost, if not quite, as much as the most advanced socialist. But our methods differ. My theory of trusteeship is no make-shift, certainly no camouflage. I am confident that it will survive all other theories."*⁵²

Idea mooted by Mohandas Gandhi is more relevant when we examine present day socio-economic situations.⁵³ 'Trusteeship' or 'Public-trust' doctrine has been most suitable doctrine to argue for the protection of environment claiming that each one of us are trustee of 'nature' and its 'wealth', and none of us has any legitimate claim to an extent of exploitation leaving nothing for our future generation.⁵⁴ Thus, bringing together, the concept of 'limited possession' through trusteeship doctrine and then adding it with constitutional idealism, corporations are responsible and accountable for welfare of

society. The interdependence of doing-business and society is inseparable, and in the words of Mohandas Gandhi 'it is only peaceful co-existence of capital and labour which will be base for the future developmental model'. This whole idea results into 'corporate citizenship' where corporation/companies and other business entities may be treated simply like individual, and it may be expected from them to perform all duties expected to be performed from any other natural person.

Duties under 'Corporate Citizenship': Towards CSR

It is proposed that corporate bodies and companies may be treated as corporate citizen, and in that reference they may be expected to work-out in a way which may ultimately reflect the Gandhian philosophy of 'trusteeship' of land, minerals and resources. In modern days, the corporate culture cannot simply look for enhancing its profit by establishing new ventures and crafting new avenues. It must show its skill in generating goodwill and acceptability to the masses in the given nail-biting competition of the market. CSR would be an alternative perspective of 'corporate citizenship' and its greater acceptability in given conditions would certainly provide more 'ethical' look to the 'doing of businesses'.

An interesting discussion is there in one of the apex court's decision about relationship between business entity and society and related duty towards the society. In *National Textile Workers' Union v. P.R. Ramakrishnan*⁵⁵ the question arose as to whether the workers union must be heard in the winding up petition before winding up by the Court. The Apex Court considered that matter and certain observations extracted hereunder:

"Today special scientists and thinkers regard a company as a living, vital and dynamic, social organism with firm and deep-rooted affiliations with the rest of the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders. It is true that the shareholders bring capital, but capital is not enough. It is only one of the factors which contributes to the production of national wealth. There is another equally, if not more, important factor of production and that is labour. Then there are financial institutions and depositors, who provide the additional finance required for production and lastly, there are the consumers and the rest of the members of the community who are vitally interested in the product manufactured in the concern. Then, how it can be said that capital, which is only one of the factors of production, should be regarded as owner having an exclusive dominion over the concern, as if the concern belongs to it? A company, according to the new socio-economic thinking, is a social institution having duties and responsibilities towards the community in which it functions."

Thereafter, the court went on and affirms the idea of corporate social responsibility in the following words:

"That is why we find that in recent times, there is considerable thinking on the subject of social responsibilities of corporate management and it is now acknowledged even in highly developed countries like the United States and England that maximisation of social welfare should be the legitimate goal of a company and shareholders should be regarded not as proprietors of the company, but merely as suppliers of capital entitled to no more than reasonable return and the company

should be responsible not only to shareholders but also to workers, consumers, and the other members of the community and should be guided by considerations of national economy and progress.

In fact this concept was once narrated by Desai, J, while sitting as a Judge of the Gujarat High Court in *Panchmahals Steel Limited v. Universal Steel Traders*,⁵⁶ where he observed that 'time-honoured approach that the Company law must safeguard the interest of investors and shareholders of the company would be too rigid a framework in which it can now operate. New problems call for a fresh approach. And in ascertaining and devising this fresh approach, the objective for which the company is formed may provide a guideline for the directions to be taken. As Prof. De Wool of Belgium puts it, the company has a three-fold reality-economic, human and public-each with its own internal logic. The reality of the company is much broader than that of an association of capital; it is a human working community that performs a collective action for the common good. In recent years, a debate is going on in the world at large on the functions and foundations of corporate enterprise. The 'preservationists' and the 'reformers' are vigorously propounding their view on the possible reform of company, the modern trend emphasising the public interest in corporate enterprise.'

Part 4th: 'Doing Business' along-with 'Promoting Fraternity'

On the basis of argument and premise laid down in part 1st of this work, one need to examine as to the role of corporations/companies and private business entrepreneurs in developing democracy, and thereby strengthening root of democracy. This alternative argument is based on our solemn pledge in the constitution to promote 'equality; social, economic, and political', and to develop 'fraternity' amongst fellow countrymen.⁵⁷ The preamble of constitution not only provide jurisprudential basis to argue for CSR but also makes it obligatory as it is a 'solemn pledge'.

Apart from propagating equality, the concept of 'fraternity' or 'brotherhood' is most interesting idea in the constitution. The possibility of this brotherhood may be there when each one, whether been direct beneficiary of such business-concern, or is simply benefited indirectly in terms of supply of goods and services, is counted in the policy of 'doing business'. It is hard to believe in all practical terms that a company can ignore its direct or indirect 'customers'. Does the meaning of word 'customer' as often used in business-concerns relate with those limited-ones who buy or deals with the company, or, will it include all such whose life and property may get affected by decision making in the company. This argument is more than a theoretical proposition. In fact, equality and brotherhood may result into greater avenues in the business sector. It not only provides necessary impetus for greater 'purchasing power' but also provides umbrella of oneness, resulting into greater cohesion and thereby exclusion of external competition threat from the given market.⁵⁸ When we see the current trend in the market, it seems to be more heterogeneous and competitive. These days, demand & supply equation is not only governed by traditional economic variables but they are, more often, controlled by 'good-will' and 'ethical' ingredients observed in the doing-business by given company. Thus, the idea of doing business tilted from mere supply of goods at affordable prices towards 'ethical' aspect of doing business. This aspect has given

new dimension to the decision making process in any business concerns.

Probably, the idea of 'equality' and 'fraternity' as enshrined in the preamble may be a better guideline for modern day's business enterprises.

Let's assume that a company, doing business in cosmetic goods, has nothing to do with education or health care of people at large. In a recent example from United States, a company is doing business by selling cosmetic products, not meant for making white-skin, but simply making skin 'natural'. The company has promoted the idea about 'dignity' and 'self-respect' related with black-skin, and thereby created huge market for cosmetic industry.⁹ One can see here the positive side of being involved in education and health care, and thereby making big business opportunities.

Part 5th: Futurology of CSR

The above discourse shows that there has been a shift of the Indian Judiciary wherein the 'social responsibilities' of a corporation have been termed not only as 'social responsibility', but, as 'legal duties' as well. Growing demands and understandings of 'corporate citizenship' may also be treated as basis for recognizing 'corporate social responsibility'. The day is not far when the inclination of the judiciary will move towards declaring a 'corporation' as a 'natural person' in terms of constitutional provisions, and henceforth, the 'fundamental duties' under Art. 51.A will be made binding on the 'corporations' as well in the sense they are binding on the citizens of India.

'Fraternity', as explained and articulated in Preamble of the Constitution, makes it amply clear and obligatory on part of each organ of the State, as well as every citizen of society, as being solemn pledge for all of us. If this philosophy of the Constitution is used in interpreting the term 'corporate social responsibility', it will contribute into attaining real 'fraternity' amongst the people.

¹ Michael Porter and Mark Kramer, *Harvard Business Review*, Dec., 2006

² R.H. Gray, D.L.Owen & K.T.Maunders, *Corporate Social Reporting: Accounting and accountability*, Hemel Hempstead, Prentice Hall, (1987); See also D. Crowther, *Social and Environmental Accounting*, London, Financial Times Prentice Hall, (2000), p. 20; Bhattacharya, C.B., Sankar Sen and Daniel Korschun, *Using Corporate Social Responsibility to Win the War for Talent*, MIT Sloan Management Review, 49 (2) (2008) pp. 37-44;

³ Archie B. Carroll, *Corporate Social Responsibility: Evolution and Definitional Construct*, BUSINESS & SOCIETY, Sage Publication, Vol. 38 No. 3, Sept. 1999, pp. 268-295

⁴ *Ibid.*

⁵ *Ibid.*

⁶ H. R. Bowen, SOCIAL RESPONSIBILITIES OF THE BUSINESS, (1953)..NewYork, Harper & Row Bowen, p.6

⁷ Other important literature from the 1950s includes Selekman's Moral Philosophy for Management (1959); Heald's Management's Responsibility to Society: The Growth of an Idea (1957); and Eells' Corporate Giving in a Free Society (1956).

⁸ Davis, K., *Can business afford to ignore social responsibilities?*, Management Review, (Spring), California, (1960) 2, pp. 70-76.at p. 70

⁹ *Ibid.*

¹⁰ *Id.* at p.71

¹¹ *Id.* at p. 73; This idea will be discussed in the latter part of this work where author will try to locate such erosion as factor hampering new business dealings in developing countries. POSCO and Singur conflicts are good example of this erosion.

¹² Thomas Donaldson, CORPORATIONS AND MORALITY, 42-54 (1982)

¹³ Elisa Westfield, *Globalization, Governance, and Multinational Enterprise Responsibility: Corporate Codes of Conduct in the 21st Century*, 42 VA. J. INT'L L. 1075 (2002)

¹⁴ David Kinley, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT'L L. 931 (2004)

¹⁵ Janet E. Kerr, *The Creative Capitalism Spectrum*, 81 TEMP. L. REV. 831, 869-70 (2008) at p. 834

¹⁶ Seema G. Sharma, *Corporate Social Responsibility in India: An Overview*, 43 INT'L LAW. 1515, 1529 (2009)

¹⁷ W. C. Frederick, *The growing concern over business responsibility*, California Management Review, 2, 54-61. (1960) at p. 60)

¹⁸ J. W. McGuire, BUSINESS AND SOCIETY, New York, McGraw-Hill. (1963), p. 144

¹⁹ C. Walton Clarence, CORPORATE SOCIAL RESPONSIBILITY (1967), p. 18

²⁰ Milton Friedman, *The Social Responsibility of Business Is To Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970, at 33

²¹ M. Friedman, CAPITALISM AND FREEDOM, Chicago: University of Chicago Press. (1962)

²² Committee for Economic Development (CED), Social Responsibilities of Business Corporations (1971) p.11

²³ *Id.* p. 16

²⁴ A. B. Carroll, *The pyramid of corporate social responsibility: Toward the moral management of organizational stakeholders*, Business Horizons, 34, 39-48. at p. 43

²⁵ One central concept within the 'perennial philosophy' is that of community. For human persons to belong to communities is natural. One characteristic of a community is that there is no conflict between the good of the individual members and the good of the community as a whole. Consequently, to be ethical, to promote the common good, is good for oneself. David W. Lutz, *Rival Philosophical Foundations of a Good Company*, The Catholic University of Eastern Africa. Available at <http://www.stthomas.edu/cathstudies/cst/conferences/thegoodcompany/finalpapers/lutz%20final%20paper.pdf> and visited on 20-01-2013

²⁶ Michael Hopkins, *The Planetary Bargain: CSR Matters*, Earthscan, 2003, UK

²⁷ Michael Porter and Mark Kramer, *Harvard Business Review*, Dec., 2006

²⁸ Article 14, 19, 21 and 32 are core of such liberties.

²⁹ *State Trading Co. v. CTO*, AIR 1963 SC 1811; See also *Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd.*, [1954] 1 SCR 674; *The Bengal Immunity Company Limited v. The State of Bihar*, [1955] 2 SCR 603; *Chiranjit Lal Chowdhuri v. The Union of India* [1950] 1 SCR 869; *Louis De Readt v. Union of India*, (1991) 3 SCC 554; *Deena alias Deen Dayala and Ors. v. Union of India and Ors.* AIR 1983 SC 1155; *Indo China Steam Navigation Co. Ltd. v. Jasjit Singh*, AIR 1964 SC 1140

³⁰ Inserted by the Constitution (Forty-second Amendment) Act, 1976, s. 11 (w.e.f. 3-1-1977)

³¹ Article 51A (a), The Constitution of India, 1950

³² *Id.* at Article 51A (e),

³³ *Id.* at Article 51A (g),

³⁴ *Id.* at Article 51A (h),

³⁵ *Id.* at Article 51A (j),

³⁶ *Id.* at Article 37,

³⁷ *Id.* at Article 38,

³⁸ *Id.* at Article 39(1)(a)

³⁹ *Id.* at Article 39(1)(b)

⁴⁰ *Id.* at Article 39 (1)(c)

⁴¹ Article 41

⁴² Article 19(1)(g)

⁴³ Article 19(6)

⁴⁴ 1983 (1) SCR 922. In *Workmen of Meenakshi Mills Ltd v. Meenakshi Mills Ltd.*, 1992 (3) SCC, 336, the right of the management to declare lay off under s.25-N of the Industrial Disputes Act, 1947 under Article 19(1)(g) of the Constitution are subject to the mandates containing Arts.38, 39A, 41 and 43. Therefore, right under Article 19(1)(g) was held to be subject to the directive principles. Similarly,

⁴⁵ JT 1995 (1) SC 637

⁴⁶ AIR 1995 SC 1811

⁴⁷ STC v. CTO, AIR 1963 SC 1811

⁴⁸ 1989(2) SCR 751

⁴⁹ (1991)1 SCC 212, para 22

⁵⁰ (1993)1 SCC 445 at page 464 para 28

⁵¹ W.P.No.802 of 2009

⁵² Harijan, 16-12-1939. The idea of Mohandas Gandhi seems to be based on spiritual concept of 'Aparigraha' (Non-possession) and 'Sambhava' (Equality) as explained in *Bhagwat Gita*.

⁵³ Sankatha Singh, CORPORATE GOVERNANCE: GLOBAL CONCEPTS AND PRACTICES, Excel Books India (2005); See the critic of Public Trust doctrine in Edward Wayne Younkins, CAPATILISM AND COMMERCE, Lexington Books, (2002), p.88-9

⁵⁴ Klaus Bosselmann, THE PRINCIPLES OF SUSTAINABILITY: TRANSFORMING LAW AND GOVERNANCE, Ashgate Publishing, Ltd., (2008)

⁵⁵ 1983 (1) SCR 922. See also *Workmen of Meenakshi Mills Ltd v. Meenakshi Mills Ltd.*, (1992) 3 SCC 336

⁵⁶ 1976 (46) Com. Case 796 (Guj)

⁵⁷ Preamble, The Constitution of India, 1950

⁵⁸ According to author best example of this is model is in the business pattern of Patanjali Yoga Pith which created space for its products not by greater commercial advertisement but by alternative process i.e. cohesion in the consumers either on the basis of 'native product' or command of respect through social works.

⁵⁹ BBB News dated 28/01/2013