Changing Dimensions of Laws on Economic Support to non-profit Voluntary Organizations: from Land Grants, Donations and *Dharmada* to Corporate Social Responsibility

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Introduction

The contribution made by Non-Profit Voluntary Organizations (NPVOs) towards the cultural and socio-economic life of any country, is substantial. They (NPVOs) consist of charities, public trusts, temples, mathas, waqfs, churches, viharas, registered societies, cooperatives, non-profit companies and such other foundations and organizations involved in social services. The objectives promoted by them include better access of the vulnerable sections to food, health, education, shelter and better facilities in places of worship. In a multicultural country with pervading historical experiences for several millenniums, the socio-cultural significance of NPVOs is immense.

For the effective functioning of the NPVOs, economic support is the life blood. Great changes have occurred in India over the years in terms of the types, methods and extent of such support. From the ancient to the modern times, support in the form of gift of land and finance has enabled the NPVOs to get involved in varieties of social service activities including religious, cultural, educational, and medical services for the devotees, the poor and the needy. The NPVOs have relied on grant of land not only for their establishment and functioning, but also for the continuous income accruing from land and building. With the decline in land grants or emergence of land reforms, divesting tenancy or bringing expropriation of land in excess of ceiling limits, donation of money and movables formed a major economic source. A share in the business transaction borne by the customer, called *dharmada*, was another source.

With the emergence of corporate social responsibility (CSR), systematic application of a certain portion of corporate income shall be channelled to recognised social welfare objectives. CSR being a new tool of connecting the corporate world to the ethics of charity, has been experienced to be complex because of the possibility of sidelining the NPVO through their direct action whereas social expectations about proper coordination of corporate body, NPVO and the beneficiaries remain unfulfilled. It is also not certain whether the most required charitable heads and traditional objectives are properly addressed by the list of permissible CSR contributions, and whether the NPVO dynamism is adequately supported.

The shift from donation of land to donation of money or movables, and from the microscopic practice of *dharmada* to large scale CSR, is not a simple shift. It is a seismic shift of legal concepts: it is a shift from the system of individual donations to collective donations. It involves a shift in mindset as well. Turbulence arises in situations of imbalances when collectivism is at loggerheads with individual rights or competes with traditional collective rights. The implementation of constitutionally enshrined goals of distributive justice and agrarian reforms has an inevitable impact of stimulating such shifts. But lack of clarity in coordinating and streamlining the efforts has produced practical problems. Recognition of minority educational institutions' right to exclude non-minority disadvantaged sections from benefits of charity is another source of turbulence. Diversity of charity law and haphazardness in their operations even in the face of uniform standards of human rights and welfare policy, have added to the complexity. The great promises and expectations revolving around CSR need to be examined from functional perspectives, socio-economic justice, community's preparedness and pragmatism.

Land law had conventionally accommodated perpetuity of succession for charitable purpose, carving out an exception from marketability, whose scope is a debatable matter. Land grants by kings, local chiefs, philanthropists and guilds or communities became a big source of income for religious and charitable institutions.[1] Practice of tenancy and the intermediary system enabled its success for centuries. With the evolution of reforms in agrarian laws since the 1950s, restraints on such practice became inevitable. Some of the Religious and Charitable Institutions (RCIs), which were originated for moral elevation of the society and helping the poor, the needy, and the marginalised through public benefit, had paradoxically become obstructive to

the ends of economic justice because of the practice of tenancy and vastness of land holding. Removal of exploitation had meant their disempowerment and downsizing or eradicating their privileges. Even when exploitation was not manifest, general policy of land reform had to prevail. State legislative policies varied from total exemption from land reform law to reduction or removal of privileges. These laws provided for limited exemption from ceiling limits and other forms of concessions, but made stringent measures against abuse of these facilities. In the matter of urban land and property, their use for establishment and daily functioning and also to gain income from lease and commercial transactions has the potentiality of economic support. Land grant for NPVOs or safeguarding them against encroachers is still an important issue that invites the law's intervention.[2]

Donation of money or moveable properties has been a great source of economic support to NPVOs. Encouraged through tax exemptions and permission for acceptance of foreign contributions, their abuses are subject to regulations. Governmental regulations of foreign contributions have been frequently criticised as unreasonably encroaching on expressional freedom whereas close scrutiny for avoidance of funding of terrorism has been found to be an imperative. Business practice of extracting contribution (*dharmada*) from consumers has the problematic issue of deciding most appropriate spending and of accountability of the businessman and measures to ensure compliance.

The present paper aims to find answers to the above complex issues through doctrinal legal research on the federal and state laws, their historical evolution, constitutional implications, judicial decisions, socio-economic impact and human rights scenario.

Land Grants

With the evolution of Buddhist sanghas, temple culture and tradition of Mathas in India, the rulers and noblemen recognised the need to support them through land grants. Buddhist Sanghas were guild type of organizations which asserted collective rights over land in perpetuity. Administrative work of temples, sanghas and mathas included collection of revenue from endowed land and interest from donations, and distribution of income for daily maintenance, for reserve fund for future, and for repair or construction of buildings. The rise of a mercantile community during the period between 200 BC and AD 300 saw the contribution of guilds of various occupations to the cultural and religious life by construction of places of worship and rich endowments for their functioning.[3] The emergence of a classical pattern of Hinduism during the Gupta period (300 to 500 AD), which encouraged cult of devotion, signalled the construction of temples and assistance to learning through the royal initiative in donating villages for god (devadaya) and to Brahmins for education (brahmadeya).[4] Aryanization of the South introduced this approach in southern kingdoms (500 to 900 AD). Local temples combined the brahmanical and devotional approaches to religion. "The temple was maintained from endowments which consisted of villages and agricultural lands – if the donors were of the royal family – or else came from the investment of capital, if the donors were merchants or guilds", writes Romila Thapar.[5] During the period from c 900 to 1300 AD, Brahmadeya and Devadaya became common patterns of land settlement that gained popular support to the rulers and extended perpetual aid to temples and mathas. Temples donated by kings, members of the royal family, officers, local chiefs, guilds, merchants or village folk thrived on the basis of gifts and banking service, and enriched the cultural life by education and fine arts.[6]

According to Romila Thapar, "The proliferation of land grants in the early medieval period accelerated the prosperity of many mathas as did the donations to the temples attached to these mathas, converting them into semi-administrative units with a tangible economic viability in agriculture and trade."[7] Exemption from tax further strengthened their hands. P R Ganapati Aiyar, in his treatise on Endowment, referred to many historical inscriptions where Kings made and supervised endowment of lands to temples.[8] Temples became centres of religio-cultural activities owing to the support gathered from land grants. The Report submitted by the Hindu Religious Endowment Commission refers to an inscription of Chola period where the King Kulottunga III made royal grants for temples, schools, hostels and hospitals whereas a rich merchant constructed a building.[9] Madras Epigraph record shows substantive grants made to a colony of 108 Brahmin families for promoting spirituality and education. The evolution and expansion of Bhakti cult in various parts of India diversified the religious institutions. The nourishment through endowment continued unabated in the period c 1200 to 1526 AD.[10] About the practice of Vijayanagara kings to involve the nobles in the task of charity in temples, one can find reference in the writings of travellers like Nuniz.[11] The bounteous land grant made by Sri Krishna Devaraya to Tallapaka Annamacharya in view of his great contribution through devotional songs has been referred and accepted in one of the *TTD* cases.[12] Land grant made by Shah Alam II, a Moghul Emperor, to the Mahant of Ayodhya Puri of Gaya has been referred in a Supreme Court judgment on estate duty.[13]

The development during the period 1600 to 1881 on the subject of endowment can be studied by referring to a historical research

conducted in relation to Wodeyar dynasty of Mysore.[14] Land grants to Brahmin scholars and Brahmin colonies (brahmadeya) by the King, officers and local chiefs continued; however, this did not expand.[15] Devadaya type of endowment flourished as it had popular appeal and potentiality of community benefit and participation. Grant of 38 villages by Kamthirava Narasaraja Wodeyar (1640-1650), 7 villages by Devaraja Wodeyar (1644-1673), 15 villages by Krishnaraja Wodeyar I (1720-24), 7 villages by Krishnaraja Wodeyar II (1749-1760), 44 villages by Krishnaraja Wodeyar III (1811-1855) and land grants by queens, Dalvoys, officers, landlords, merchants and goldsmiths to temples and services in temples speak about the continuity of philanthropy spread all over the princely state.[16] Non-discrimination amidst different cults – vaishnava, shaiva and shakta – and continuity of grant during the non-Hindu rulers like Hyder Ali, Tipu Sultan and the British tell about social harmony and coherence with which charity continued.[17] Right to collect income, revenue, rent, tax, cess and fee was part of both the grants.[18] In socially integrating the newly annexed territory by invoking mass support, devadaya worked well. Charity to temples outside the state had the objective of facilitating pilgrimage. In addition to land grants, cash grants and gifts of jewels, vessels, brass plated doorways, and consumables were also documented in epigraphic evidences. The purposes of grants included construction or repair of temples, mass feeding, waving of lamps and perfumes, engaging the services of temple attendants, holding of festivals and annual fairs, and support to performing arts, sculpture and architecture.[19] The temple administration headed by Parupatyegars had the duty to implement the objective of the grants. Having obliged by the state, the temples had the obligation of maintaining the social set-up of morality, piety and urge for spiritual merit and improve the quality of life, and respecting the donor's wish with

Creation and proliferation of grants had to be supported by principles and practices relating to preservation and protection of devadayas. Transfer of legally perfect title with right of vyvahara chatustaya – to gift, sell, mortgage and exchange – avoided uncertainties.[21] Stern warning with imprecatory verse at the end of grant dissuaded the people from immoral acts of misappropriation. It was regarded, "The property belonging to the gods is a terrible poison. Poison is no poison, it kills only one, the property of the gods kills even the sons and grandsons."[22] Protecting a grant was more meritorious than making a new one. Persons who seized and misappropriated the devasvam, or who cheated the services were cursed with consequences of grave sins.[23] By appealing to future kings and common people for implementing the objectives of grants, time's crooked gap was bridged. Tipu Sultan's circular to Amildars and Shirstedars ordained, "The temples are under your management; you are therefore to see the offerings to the gods and the temple illuminations are duly regulated as directed out of government grants. The offerings are to be subsequently distributed among the poor; but they ought not to be partaken of by the Pujaris; you are to take care that money and provisions belonging to the temples are not stolen; and you are further to prepare a list of all the jewels of the temples..."[24]

The two evils that haunted Hindu religious and charitable institutions included, according to H V Nanjundaiah, mismanagement and cupidity of dishonest persons entrusted with the management.[25] Minister Purniah took steps of administrative reforms including revenue survey, classification of land and proper documentation of land grants.[26] The British efforts of documenting, accounting and auditing under the Muzrai department began to further streamline the endowment system.[27] This culminated in the system of Inam administered through Inam Commission since 1866.

The Inam Commission, which had final adjudicatory power, categorised the grants into: devadaya, dharmadeya, personal grant (mainly to Brahmins), Inam for miscellaneous service (such as Setti, police, keepers of tanks, forest and grazing yard), village artisans and village service inams.[28] The interim measure adopted in 1866 included declaration of absolute royal grants as hereditary and alienable; imposition of varying quit rents upon different categories of inam receivers in order to confer full-fledged rights.[29] In 1868, the Government of India made rules which provided that (i) allowances made up to 1830-31 and those which were renewed by the Mysore government were to continue; (ii) ready money allowance paid to institutions from specific revenue heads like Abkari and Sayar shall continue; (iii) grants given to religious and charitable institutions were to be continued as long as the institutions were satisfactorily maintained; and (iv) hereditary personal and subsistence grants shall be extended to successors also.[30] It should be noted that the rule (iii) reflected an enduring principle of NPVO law. The Inam Commission confirmed 57,888 land inams, kept 11,302 inams in abeyance for invalidity of tenure, and struck off 4,658 claims as unsubstantiated. Cash grants confirmed in 1942 was to the tune of Rs 2,68,940.[31]

The Mysore Muzrai Rules made since 1852 provide for administrative arrangement for periodic allowances for purposes like Devadaya, Brahmadeya, expenses of Mathas, brindavan, Basdi, Darga, Masjid and individual services, and bureaucracy for the regulation. Section 14 of the Mysore Religious and Charitable

Institutions Act, 1927 elaborately provides for the management of muzrai institutions by the government. Muzrai rules have systematized the Inam settlement of money grants for various purposes such as Malnad Inams in the form of remission of revenue charges, Gograss allowances for maintenance of cows by temples and individuals, Kodagi inams for remunerating the upkeep of public tanks, exchange of uncultivable lands for agricultural land, and rules for the acceptance of charitable deposits. Depositing of minimum and maximum sums, a written document stating the purpose, investment policy, and receipt on behalf of educational institutions have been regulated by the muzrai rules.[32]

The above account of the Mysore experience is representative of the development in other parts of the country. The volumes of publications brought out by Bharatiya Vidya Bhavan on temples and legends in various states and other literature corroborate the practice of grants of land, cash and objects by devotees, kings, wealthy merchants, landlords, officials and others.[33] There is ample evidence – inscriptions, epigraphs, and documents - about providing and application of grant for renovation and restoration of devadayas.

Non-application of the rule against perpetuity to charities

The law of transfer of property and succession has created a privilege for charities by non-application of the rule against perpetuity.[34] Public benefit arising from charity, expectations of beneficiaries, reliance of charitable institutions in handling the property for the use by devotees and overall economic benefit are the justifications behind the exception. A strong policy in favour of gifts for charitable purposes arises from its three characteristics identified by Sir Asutosh Mookerjee: indefiniteness, meritoriousness and continuity.[35]

Benefit to the public and indefinite individuals, mankind's reverence to the wishes of the founder and the determination that it shall continue its work of beneficence forever escaping from the vagaries and uncertainties, support the exception. Common religious tradition, collective interest because of joint ownership and management of landed property for common purpose, and village community's concern for common facility were the factors that created primitive collectivism for landed right during antiquity. In spite of persuasions to keep the land open for commercialization, recognition of these factors has the potentiality of serving the original purpose of community right over land for people's welfare.[36] Trusts established for charitable purpose are by nature considered as inalienable by virtue of enduring importance of the purpose,[37] absence of definite beneficiaries and incompetence on the part of any body to alienate.[38] Writers on charity in other jurisdictions consider that judiciary has tried to make charity more effective by a liberal interpretation of the relevant clauses.[39]

As per section 18 of the Transfer of Property Act, 1882, "The restrictions in Sections 14, 16 and 17 shall not apply in the case of transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind." These sections respectively provide for a rule against perpetuity, restriction against remote vestment and limit on accumulation of income.[40] The basic idea underlying them is to enable free transferability of immovable property so that it will remain dynamic and valuable, and would not become dead.

Application of section 18 has resulted in upholding of the permanent endowment or land grant for performance of ceremonies and giving feasts to Brahmins;[41] for constructing wells or tanks for animals to drink water;[42] for feeding travellers and maintaining sadvarats;[43] for establishing hospitals; for supporting the activity of university;[44] for the benefit of the poor for aiding pilgrimages and marriages;[45] and for repair of imambara.[46] Charity for vague purposes like dharma and kherat; for personal spiritual benefit; and only for remembering the ancestors of the donors is invalid.[47] Charity to the idol even before its creation is valid.[48] Trust and bequest of land in support of perpetual acts of religious ceremony is valid.[49]

In the matter of rule against remoteness of vestment of property, six types of situations can be seen. The first four circumstances are those where an individual is the initial or contingent beneficiary, and application of rule against perpetuity is not countervailed by charity. In other two circumstances where both initial and contingent beneficiaries are charitable trusts, section 18 is applicable. In the *Christ's Hospital* case where the property was bequeathed to one charitable trust, with a proviso for transfer to another charitable trust if the former failed to apply the property in a proper manner, the bequest was upheld.[50]

The preceding discussion points to the law's concern for special status of charity and to carve out an exception to commercial use of property. Looking to the rationale behind the original concept of property and its social use, matching the indestructibility and inalienability of property to enduring character and social utility of charity becomes appropriate. However, the legal policy is to confine the privilege to public religious and charitable purposes. This calls for purpose scrutiny in analysis of law and facts.

Land gifts under family law

Alienation of family property by way of gift to charity is not recognised as

reflecting either legal necessity or family benefit. But the law recognises gifting of one's personal property or share of family property for charity. Competence to gift the property and family obligation of protecting the interests of the kith and kin are the determinative factors for gifts. Regarding bequest through Will, the position is similar. Gift is a mode of transaction in favour of charitable purpose under the Transfer of Property Act, 1882. Rigidity of the requirement relating to consent of the donee is dispensed with in Hindu law whereas the requirement of registration is exempted under section 129 of the TP Act. According to section 129, "Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law." Section 129 of T.P. Act preserves the rule of Muhammadan Law and excludes the applicability of S. 123 of T.P. Act to a gift of an immovable property by a Muhammadan. It is not the requirement that in all cases where the gift deed is contemporaneous to the making of the gift, then such deed must be registered under S. 17 of the Registration Act.[51]

Agrarian reform laws and Religious and Charitable Institutions

Land grants or gifts to Religious and Charitable institutions (RCIs), whether in large scale or otherwise, were followed by the practice of tenancy because of the sheer fact that these institutions could not get involved in personal cultivation of the land. Brahmadeya grants, as discussed previously, had created a powerful intermediary system in the past. Devadaya grants made to temples and mathas had created either strong or modest economic power centres operating through the system of intermediary. Added to the royal power supporting these institutions, the widely prevalent spiritualism compelled the tenants to perform their obligations to the institutions. Along with evolution of the idea of a socialistic pattern of society, the land holding by the RCIs came under the scanner of agrarian reform policies. From the angle of economic justice, rural upliftment and poverty eradication as launched under the aegis of the republican Constitution, subordinating the RCIs, which are also instruments of socio-economic justice and cultural life, to the value goal of agrarian reforms is a laudable approach, provided that the balancing task is duly taken care of. Three important legal measures, viz., ceiling on the extent of land holding, abolition or regulation of tenancy and abolition of intermediaries have cast an impact upon the RCIs.

Land ceiling law and RCIs

In view of scarcity of cultivable land, a vast number of landless masses and growing problem of poverty, the states in India adopted the policy of ceiling limit on the extent of land holding. The outcome of the traditional practice of pious benefactors to grant vast areas of land to RCIs had to be dealt with by the new laws by various States which had diverse policies.

Orissa, Madhya Pradesh and Kerala have opted for not disturbing the land held by RCIs. Under section 2 (24) of the Orissa Land Reforms Act, 1960, Privileged raiyat includes: (b) "Lord Jagannath" at Puri and His Temple within the meaning of the Shri Jagannath Temple Act, 1955 ; (c) any trust or other institution declared under this Act to have been a privileged raiyat prior to the commencement of the Orissa Land Reforms (Amendment) Act, 1973; (e) any other trust which is declared to be a religious or charitable trust of a public nature by the Tribunal constituted under section 57-A." According to section 38, "Save as otherwise provided in this section, the provisions of this Chapter shall not apply to - (a) land held by a privileged raiyat: Provided that nothing in this clause shall apply to any land held by a raiyat under a privileged raiyat;" Non-application of agrarian reform law (tenancy and rent law) upon the land held by Gurudwaras is an established principle.[52]

According to section 3 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960, the category of land exempted from the application of the Act include "(c) land which is the property of a public trust or a wakf for a religious purpose: Provided that (i) such public trust or wakf is registered on or before [the 1st January, 1971] under any enactment relating to public trust or wakf for the time being in force and the entire income of such land is appropriated for the purpose of such trust or wakf; (ii) such land is property of the public trust or wakf on the appointed day."

Under section 57 of the Kerala Agrarian Relations Act, 1960, land owned or held by a public trust for religious, charitable or educational institution of a public nature is exempt from the ceiling limit provided that the entire income of such land is appropriated for the institution or the trust concerned. Under section 81 of the Kerala Land Reforms Act, 1963, land owned by religious, charitable or educational institutions, sites of temples, churches, mosques and cemeteries and burning and burial grounds, land occupied by educational institutions, parcels of land belonging to mills, factories or workshops, which are necessary for their operation, private forests, etc, are eligible for exemption. But in 2013, in response to the proposal by the Centre, the Kerala Government initiated the policy of dispensing with the exemption.[53]

As per section 6 (viii) of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, land held by or under a religious or charitable wakf, trust, or endowment which was in

existence before 1st May, 1959 is exempt from the ceiling limit.

Most of the States have imposed ceiling limits on land held by RCIs, but have provided for a special privilege of retaining areas larger than the individual landholders are entitled to hold. Under the Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970, originally the trusts were exempt but later by the Act of 1972, a ceiling limit was fixed according to the character of the trust, and the trusts were prohibited from acquiring agricultural land after 1.3.1972. However, if any trust acquired land after 1.3.1972 for educational or hospital purposes, such trust may apply to the Government for grant of permission under section 37-B of the Act. Under the law, no public trust shall personally cultivate land in excess of 20 standard acres and no cultivating tenant under any public trust shall be evicted from his holding or any part thereof by or at the instance of the public trust except for arrears of rent, negligence which is destructive or injurious to the land etc.[54]

Section 14M (6) of the West Bengal Land Reforms Act, 1955 states, "Notwithstanding anything contained in sub-section (1), a trust or an institution of public nature exclusively for a charitable or religious purpose or both shall be deemed to be a *raiyat* under this Act and shall be entitled to retain lands not exceeding 7.00 standard hectares, notwithstanding the number of its centres or branches in the State." This is the maximum land holding allowed. In case of individuals or small families, the permissible holding is 2.5 acres.

According to section 63 of the Karnataka Land Reforms Act, 1961, 1974, (7) (a), no educational, religious or charitable institution or society or trust, of a public nature, capable of holding property, formed for an educational, religious or charitable purpose shall hold land except where the income from the land is appropriated solely for the institution or the society or the trust concerned. Where the land is so held by such institution, society or trust, the ceiling area shall be twenty units. If any question arises whether the income from the land is solely appropriated for the institution, society or trust, it shall be decided by the prescribed authority. The decision of the prescribed authority shall be final. Where the prescribed authority decides that the income is not so appropriated, the land held by the institution, society or trust shall be deemed to be surplus land and the provisions of sections 66 to 76 shall, so far as may be, apply to the surrender to and vesting in the State Government of such land.

As per section 109 (ii) and (iii), the State may exempt from ceiling limit, land held by educational institutions recognised by the State or Central Government to be used for non-agricultural purpose, the extent of which shall not exceed four units; places of worship to be specified by the Government by notification which are established or constructed by a recognised or registered body for non-agricultural purpose, the extent of which shall not exceed one unit.

According to section 106, "(1) In respect of the amount payable to a religious, charitable or other institution capable of holding property the provisions of sections 47, 50 and 51 shall have effect subject to the modifications specified in sub section (2)." As per this provision, in respect of land held by such institution and vesting in the State Government under the provisions of this Act, the amount payable shall be an annuity to be paid so long as the institution exists, of a sum equal to the net annual income referred to in sub-section (2) of section 72. Towards the annuity so payable, the State Government shall issue a non-transferable and non-negotiable annuity bond.

Under section 47 of the Maharashtra Agricultural Land (Ceiling on Holdings) Act 1961, educational institutions conducting research in agriculture are entitled to exemption from the ceiling limit. Land held by public trusts for educational purposes, hospitals, pinjrapoles or goshala are also exempt from the ceiling limit. As per section 3 (1), no person or family unit shall, after the commencement date, hold land in excess of the ceiling area, as determined in the manner hereinafter provided. RIs are not entitled to special privileges. Similarly, no exemption is provided from ceiling limit of land holding for religious institutions under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952.

In Assam, in view of vast areas of land granted by earlier kings to religious institutions with power to impose land revenue (Lakhiraj), with the latter acting as intermediaries, law has provided for acquisition of land except the land held for buildings for devotees' residential use and land held for keeping orchards and flower garden prior to the commencement of the Act.[55] Section 8 of the State Acquisition of Land held by Religious and Charitable Institutions of a Public Nature Act, 1961 provides for acquisition of land held by institutions of a religious and charitable nature on payment of compensation in the form of perpetual annuity equal to their net income. The method of computing net income was laid down in detail. There were about 209 RCIs whose land was 3,71,000 bighas out of which 3,26,178 bighas of land was acquired. The rights of tenants did not get disturbed.[56]

Tenancy law and RCIs

Tenancy is a traditional method through which RCIs managed the gifted land and used the income for their functioning. Again, diversity prevailed in state land reform policies. Protection against ejection, fair rent fixation, right to

compensation for improvement and recognition of right of purchase were the softer policies. The revolutionary policy that the tiller shall be the owner of the land, which became popular in the early 1970s, brought a paradigm change. The major trend of development was towards application of this policy without exception. This can be found in the legislations of Karnataka, Kerala, West Bengal, and Rajasthan. Under section 44 of the Karnataka Land Reforms Act, all the land held by the tenants of whatever class stand vested in the state on the appointed day; the tenants would be given occupancy right after due inquiry on the declaration that they file.[57] Normally, the compensation would be fifteen times or twelve times or ten times of the annual income from the land, which, in turn, shall be ten times of the land revenue.[58] In case of RCIs, there shall be payment of permanent annuities as per section 106 as discussed above. Uttar Pradesh law treats other landlords and RCIs on equal footing in the matter of compensation.

Section 3 (x) of the Kerala Land Reforms Act, 1963 exempts from extinguishment the tenancies in respect of sites, tanks and premises of any temple, mosque or church (including sites belonging to a temple, mosque or church on which religious ceremonies are conducted)] and sites of office buildings and other buildings attached to such temple, mosque or church, created by the owner, trustee or manager of such temple, mosque or church: Provided that nothing in this clause shall affect the right to which a tenant was entitled immediately before the commencement of this Act under the contract of tenancy or under any law then in force. However, this policy was reversed in course of time. Section 3 of the Sri Pandarvaka Lands (Vesting and enfranchisement) Act, 1971 extinguishes the right, title and interest of the temples in Pandarvaka Tanatu land, and vests the rights in the Government. The Government shall pay compensation to the temple in the form of a fixed annuity in lump sum, in perpetuity. Periodic review/enhancement of annuity is also contemplated. The landholders shall pay compensation to the Government to get the title. If the Government is satisfied that the land is absolutely essential for the purpose of the temple, the Government may order for re-vesting of the property on the temple. In 2009, a Bill was initiated to increase the annuity by three times and to increase the annuity by twenty five per cent over five years.[59] Judicial decisions on issues relating to section 3 of the KLR Act, 1963 have adequately taken care of the interests of temples satisfactorily.[60]

In contrast, the Orissa law recognises the RCIs as privileged raiyats, and therefore entitled to lease the land, and resume it; tenants were not given the right of purchase. In the former Pepsu area of Punjab, tenancy reform law is not applicable to RCIs. In Gujarat and Maharashtra, the tenants of RCI were given security of tenure; their rents were regulated but they were not given right of purchase. Where the tenant of the land which was the subject matter of trust became deemed purchaser of the land under S. 32 of Bombay Tenancy and Agricultural Lands Act, and the landlord sought to create the trust bequeathing the land as gift to the trust to which he was also a beneficiary, the tenant would be entitled to be heard being an interested person.[61] The Bombay law provides exemption to RCIs from some aspects of tenancy law. Such privilege cannot be claimed by any unregistered bodies. The differentiation is not offending religious freedom.[62]

Abolition of intermediary system and the RCIs

In the matter of abolition of intermediaries like Inams, Estates and Zamindaris, most of the states have gone for payment of compensation to RCIs either in lump sum or in the form of annuities. Orissa, Karnataka, Tamil Nadu, Rajasthan, Madhya Pradesh and West Bengal come under this category.[63] Section 1 (2) (i) of The Hyderabad Abolition of Inams and (Cash Grants) Act 1954 enacts that it is not applicable to inams held by or for the benefit of RCIs. In Saurashtra area of Gujarat, RCIs are allowed to retain the Gharkhed lands and are paid perpetual annuities in case of acquisition of estate.[64] Abolition of estates in Madhya Pradesh does not differentiate between RCIs and other estate holders in the matter of form of compensation.[65] The Madras Inam Estates (Abolition and Conversion into Ryotwari) Act (26 of 1963) empowers the State to notify inam land granted to any temple and acquire the same although the land was exempted from the application of Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 as belonging to RCI of public nature.[66] The Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 has comprehensively covered all the categories of inams exhaustively, and has clearly provided for vesting of Inams in the State, rendering all the cultivators of the Inam as land owners of the land (section 4). The Inamdars shall cease to have interests in the property and are entitled to nominal compensation as calculated under section 17, which provides for economic justice by providing for higher rate of compensation to the smaller Inamdars and lesser compensation to bigger Inamdars.

Implications of Agrarian reforms on RCIs

The effect of agrarian reforms on the functioning of RCIs was huge. As per official deposition, "The Tirupati-Tirumala Devasthanams had six hundred villages yielding an income of seven lakhs of rupees every year. About a crore of rupees had been

invested to acquire them. The Government took over the villages in 1950 under the Zamindari Abolition Act and a compensation of only twelve lakh rupees is being given."[67] Fixation of fair rent and grant of occupancy right to the tenants ultimately had a drastic effect upon the temple income.[68] In view of land scarcity, abolition of princely states and reduction in land holdings, land grant to RCIs was out of question. Temples solely depending upon income from landed properties faced the problem of economic deterioration, and it was found difficult to preserve even poojas and rituals.[69] Various officers, trustees and public men have deposed before the HRE Commission and have expressed these views in relation to various states. Inadequacy of compensation has been adversely commented upon. Cultural life including festivities suffered a setback. On the other hand, there is reference to a positive side of the reform: the original intention of donation of land for welfare of the community by supporting the temples and tenants simultaneously was defeated because of the neglect in cultivating the mwafi land and due to the sense of uncertainty on the part of tenants; low yield resulted in low income; and governmental acquisition was the right policy.[70] Since RCIs did not personally cultivate and could not generate satisfactory income, landed property of RCI became an encumbrance rather than source of help. The question of the government managing the landed property of RCI and making the income available became preposterous.[71]

The HRE Commission has recommended that consistently with the accepted objective of socialistic pattern of society, the agrarian reform is to benefit the tenants and tillers of the soil, and in the case of RCI landlords also the position is not different; that it is desirable to keep the RCIs outside the purview of land ceiling law; that perpetual annuity equivalent to average annual income of the last six years shall be made to the RCIs in case of divestment of land from RCI; and in case of acquisition, compensation shall match the inflated market situation and the needs of the RCIs.[72] When RCIs are given some privileges such as exemption from agricultural income tax, it cannot be claimed by entities which make use of the income for non charity purposes.[73]

Protection of immovable property of RCIs against unauthorised alienations and encroachments

In various laws governing endowment and waqf, express and elaborate provisions are enumerated requiring that the holder of property on behalf of RCI shall not alienate immovable properties of the RCIs without the prior permission of the authorities under the respective Acts. Transactions in violation of this rule are invalid.[74] For eviction of persons encroaching upon the land of RCIs, stern measures can also be found in the State laws.[75] In view of the vast amount of landed property of waqfs under unauthorised occupation, meticulous vigilance is required.[76]

Growing importance of donations: Shift from landed right to community responsibility

When land as a regular source of income failed, indirectly it was proving a theory that the immovable is destructible whereas movable (that which moves the heart) is indestructible.[77] What a rich man can do by construction of a temple, a poorer man can do better by viewing with sheer devotion that his legs are pillars, his body is the shrine and his head is the golden pinnacle.[78] Making a God in feeling and carving an idol in devotion is a great strength at the individual level. When the whole community does it by pooling the individual strength or little contribution not only for a pious cause but also for greater welfare of the society, an admirable social capital emerges. That happened to be the story of India's response to depletion of resources to RCIs and to the whole of the NPO movement post agrarian reforms scenario. The famous temples or RCIs of Tirupathi-Tirumala, Thiruvananthapuram, Guruvayoor, Sabari Malai, Madurai, Kanchi, Dharmasthala, Kukke Subrahmanya, Puri, Mantralayam, Shirdi, Putaparti, Kalighat, Varanasi, Gaya, Vaishnodevi, Somanath, and a large number of other temples and mathas witness huge flow of funds in the form of hundi collections, seva fees and donations of movables by the devotees to the temples.[79] Tax exemption available to the donors under section 80 G of the Income Tax Act, 1961 and exemption of RCIs from tax for receipt of donations have facilitated the donations. Foreign Contribution Regulation Act 2010 has also enabled international donations. Facility for funding through e-banking has further added to the facility of donation. But neglect of lesser known temples and absence of arrangements for distribution of surplus to the less funded temples have perpetuated the problematic situation of fund crunch on their part. For them, loss of land has permanently incapacitated their competence.

Dharmada

Dharmada reflects dharmadaya, dharmarth or dharmakhaten, which means 'an endowment, grant of food, or lands, or funds, for religious or charitable purposes', 'the head of accounts under which pious or charitable gifts are entered'.[80] As a part of the mercantile tradition, businessmen in some parts of the country collect a small portion of money from customers or suppliers

or both, keep separate accounts of the same and spend the amount so collected for charitable purposes.[81] The rate generally ranged from 0.02 per cent to 0.05 per cent. Under the Income Tax Act, 1961, dharmada collections are not to be regarded as income of the assessee; however, it is his responsibility to give proof about spending the amount for charity.[82] Section 54 (1) of the Bombay Public Trusts Act, 1950 states,

Where according to the custom or usage of any business or trade or the agreement between the parties relating to any transaction any amount is charged to any party to the said transaction or collected under whatever name, as being intended to be used for a charitable or religious purpose the amount so charged or collected (in this Act called 'dharmada') shall vest in the person charging or collecting the same as a trustee.

Any person charging or collecting such sums shall, within three months from the expiration of the year for which his accounts are ordinarily kept, submit an account in such form as may be prescribed to the Deputy or Assistant Charity Commissioner.[83] These officers have the power of making suitable inquiry into the correctness of the account and ordering for appropriate disposal of the amount in the prescribed manner.[84] The Rajasthan Public Trust Act has made special provision for treating *dharmada* by a committee consisting of members elected in the prescribed manner by persons connected with trade and business.[85]

A significant point to be noted about dharmada is that the law has accommodated use of a small portion of business transactions for charity in order to conform to the traditional approach that welfare of the society shall be taken care of at least as tokenism or as a point of remembering the principle that artha shall be subordinate to dharma. While charity for dharma is regarded as vague, setting apart a portion of gross amount as dharmada is not considered as vague because the customary practice of accounting and using the dharmada funds for specific charitable purposes has brought clarity for generations. The ancient Indian corporate life recognised the involvement of guilds and other organizations in charitable acts. Parties to transactions did not find it as an unreasonable burden and joined hands with the mercantile community in the task. The idea of corporates giving had the seeds of corporate social responsibility of the modern genre.

Corporate Social Responsibility

Corporate Social Responsibility (CSR), in essence, is treating all the stakeholders of the corporate world in a socially responsible way.[86] The stakeholders are several: workers, consumers, shareholders, creditors, management, suppliers, sellers, and the society and environment at large. It is more than ordinary law abidance. It represents expectations of business by non-state stakeholder groups and strategic management of their demands by the corporate bodies.[87] Going beyond mere benefits to the parties of immediate concern and relation, fulfilling reasonable expectations of the socially low visible segments like the poor and the downtrodden reflects the developmental side of CSR. Unlocking the potential of development with the help of anti-poverty initiatives and philanthropic measures has been at the bottom of its successful scheme. According to Michael Hopkins, "CSR is a complete opposite to beggar-thy-neighbour policies. This is because its positive impacts on stakeholders would mean that consumers would be able to earn adequate wages to purchase the products they produced; the environment would improve and create less drag on the company and its surroundings; improved governance would reduce transaction costs; human rights policies would provide dignity to workers and communities, and improve productivity in local outlets and facilities."[88]

While in a larger sense CSR has wide amplitude of benevolent business, in a specific legal sense after the Companies Act 2013, it reflects the legal obligation to give a portion of profit for recognised purposes of social welfare.

Gandhiji's emphasis on trusteeship of the rich, the princes and capitalists for the benefit of society as a whole not only aimed to disarm the wealthy from exploitation but also to harness the economic means for just ends.[89] He believed that introduction of moral values into the domain of economics would humanize commerce and avoid social sin.[90] It was a means of transforming capitalist order into an egalitarian one without plunging the country into chaos. He said, "In fact, capital and labour will be mutual trustees, and both will be trustees of consumers. The trusteeship theory is not unilateral, and does not in the least imply superiority of the trustee. It is… a perfectly mutual affair, and each believes that his own interest is best safeguarded by safeguarding the interests of the other."[91]

In order that the state's social responsibility in developing a welfare state is supported by responsibility in the private sphere, statesmen emphasized the same. In fact, for companies, the CSR route is comfortable as it protects their credibility, enhances their reputation, avoids loss and litigation, widens business and brings moral courage and satisfaction. As Lal Bahadur Shastri viewed, "Society's estimate about business that its aim is selfish gain rather than advancement of general welfare will stand altered if business is fully alive to its social responsibilities and helps our society to function in harmony as one organic whole."[92]

Instead of the traditional view of a company as an organization of property capable of striking a socially

responsible balance of power,[93] proceeding with a new socio-economic thinking that it is a social institution with duties and responsibilities towards the community, one can claim that maximization of social welfare should be the legitimate goal of a company.[94] The concept of corporate social responsibility means that organizations have moral, ethical and philanthropic responsibilities in addition to their responsibilities to earn a fair return for investors and the company with the law.[95]

In India, the Gujarati and Parsi business communities of Mumbai in particular, led by Jamshedji Jejeebhoy, Jamsetji Tata, Sir Dinshaw Petit and Premchand Roychand, spearheaded philanthropy in business giving. Under the spell of Gandhiji, big business houses like Birla, Jamnalal Bajaj, Lala Shri Ram, Ambalal Sarabhai and others contributed liberally to the untouchability eradication movement, women's empowerment and rural reconstruction. Since the 1980s, Foundations established by TATA, Infosys, Azim Premji and Aditya Birla institutionalised CSR. The Sachar Committee on Simplification of Company Law observed in 1988: "Every company, apart from being able to justify itself on the test of economic viability, will have to pass the test of socially responsible entity."[96] The spread of the idea of CSR to other companies as a voluntary measure became a matter of great importance in corporate philanthropy in the 21st century.[97] The OECD Guidelines for Multinational Enterprises, 2008, provided for voluntary principles and standards for responsible business. The atmosphere became ripe for introducing mandatory corporate responsibility under the new company law.[98]

Under section 135 (1) of the Companies Act, 2013, every company with a net worth of Rs. 500 crores or more, or turnover of Rs. 1,000 crores or more, or net profit of Rs. 5 crores or more during any financial year, shall constitute a CSR committee of the Board consisting of three directors or more, out of which one shall be an independent director. The Committee shall formulate and recommend a CSR Policy which indicates the activities to be undertaken by the Company as specified in Schedule VII, recommend the amount of expenditure to be incurred for the same and monitor the CSR policy of the company from time to time.[99] The Board of the Company shall approve the recommendations of the Committee and shall ensure that the activities included in the CSR policy of the company are undertaken by the company.[100]

The Board shall ensure that the company spends in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy.[101] The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for the CSR activities. If the company fails to spend such amount, the Board shall in its report, specify the reasons for not spending the amount.[102] This reflects the approach of "Comply or Explain" without penal consequence.

The activities specified in Schedule VII relate to:

- Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water;
- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently-abled and livelihood enhancement projects;
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water;
- Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicrafts;
- Measures for the benefit of armed forces veterans, war widows and their dependants;
- Training to promote rural sports, nationally recognized sports, Paralympics and Olympics;
- Contribution to the Prime Ministers' National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of Scheduled Castes, Scheduled Tribes, other backward classes, minorities and women;
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- Rural development projects.

The rationale behind the above objectives consists in the concern for implementation of the millennium developmental goal. The Supreme Court in *G. Sundarrajan* observed,

CSR is envisaged as a commitment to meet its social obligations by playing an active role to improve the quality of life to the communities and stake-holders on a sustainable basis, preferably, in the project area where it is operating. CSR strategy has to be put in practice in line with the millennium development goals as lodged by United Nations and adopted by the Government of India in the 11th Five Year Plan i.e. 2007-2012, which could cover the areas of education, health, drinking water/sanitation, environment, solar lighting system, infrastructure for backward areas, community

development and social empowerment, promotion of sports and traditional forms of arts and culture, generation of employment opportunities and livelihood to be a part of the National/Local initiatives to provide reliefs /rehabilitation in terms of natural disaster, calamities etc.[103]

A clarification issued by the Ministry of Corporate Affairs in 2014 on CSR stated that Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. It further clarified that CSR activities should be undertaken by the companies in project/ programme mode.[104]

On the positive side, the possibility of a significant amount of funds flowing from the corporate sector should be noted. According to one estimate, around 8,000 companies would fall under the Act's ambit and this mandate would translate into an estimated CSR spending of Rs. 12,000 - 15,000 crore annually.[105] Local area development, emphasis on community development, environmental protection, women's empowerment, and education have great urgency and immense potentiality for social help. In response to challenges of liberalization and globalization, running the corporate business in an economically, socially and environmentally sustainable way becomes an imperative, which CSR facilitates. A big breakthrough in the relation between the corporate sector and society with better participation for societal welfare is a great expectation. In the place of corporate philanthropy, a legally prescribed corporate responsibility towards the society sends the message of company-community partnership in planning and executing the developmental activities. CSR is an attempt to supplement the government's efforts of involving the Corporate World in the country's development agenda. This is an innovative and positive approach which will surely strengthen the social standing of every company implementing CSR.

On the negative side, some points may be noted. (1) The 'comply or explain' model is not effective as the standards about satisfactory explanation or authority to decide the same are not provided under the Act. There is no liability for failure to implement CSR. Hence, CSR has become toothless in reality. According to a research survey by Economic Times, only 18 per cent of the eligible companies conformed to the requirement of 2% spending for CSR objectives.[106] (2) Local preference rule is likely to marginalize the less developed areas because most of the companies operate in developed areas. (3) Social security measures for the working community are undeservingly left out from Schedule VII. (4) CSR operates as a tax camouflage.

With respect to the implementation of CSR policy, companies are at liberty to (a) directly execute; or (b) set up their own NP Foundations for implementation; or (c) collaborate with NPOs or NGOs; or (iv) pool resources and efforts with other companies. Companies may choose to conduct their CSR activities through an independent implementation partner.

According to Rule 4 (2) of the CSR Rules, a company may undertake its CSR activities once they are approved by the CSR Committee through a registered trust, society or non-profit or Section 8 (previously Section 25) company.[107] However, if such implementation partner is independent, i.e. not established by the company or its holding or subsidiary or associate company, it shall have the experience of three years in undertaking similar projects or programs. As per the Rules, the company must specify the projects or programs to be undertaken through the implementation partner as well as 'the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.' Hence, the company has to fund its implementation partner but its role is not merely to give a grant - the company must know exactly how funds are to be utilized and monitor the implementation partner. The partner must report to the company on how the grants are being used to meet the CSR objectives.

Various steps involved in the implementation of CSR policy by collaborating with the NPO/NGO are as follows: Firstly, the CSR committee of the company must develop a CSR strategy and policy, keeping in mind the guidelines in the Companies Act and Rules. This policy must clarify what the company's vision and budgets are on an annual basis and be available in the public domain.

Secondly, the company shall select the implementation mechanism. In selecting the NGO route as the best one, the company should take into account factors like availability and access to a good implementation partner, the degree of customisation required for a project and the degree of costs, control and expertise of the company.

Thirdly, the company must conduct a full due diligence of a potential NGO that it may use as an implementation partner to assess the benefits and risks of entering into such a partnership.

Fourthly, the NGO must develop a feasible project proposal taking into account the CSR policy of the company as well as the project goals, milestones, timelines, etc. This proposal must also estimate the budget and how the project is to be funded highlighting how much the company will need to contribute and how the contribution will be utilised. Fifthly, the project proposed by the NGO must be approved by the CSR Committee by ensuring that it is in line with the company's CSR policy, the monitoring indicators are clearly defined and adequate funds are available.

Finally, a Memorandum of Understanding (MoU) must be drawn up that defines the roles, responsibilities, deliverables, commitments and consequences of breach. It is very important that the MoU sets out a disbursement schedule which highlights when payments will be made by the company (usually monthly or quarterly). The Confederation of Indian Industries and Credibility Alliance have published Guidelines for companies to identify suitable NGO partners. The Guidelines include observing the operations, vision, transparency and accountability. The Guidelines also make it very clear that if an NGO provides any information, it must be ready to submit an affidavit by the authorized signatory attesting to the authenticity of the information given. To select an authentic NGO from the thousands of NGOs that operate in India, there are some recommended portals that list NGOs of repute. On the whole, while CSR has substituted or supplemented traditional charity, by relying on civil society bodies for implementation of CSR objectives, it has expanded the role of Non-Profit Voluntary Organizations.

The judicial approach to CSR's connection with environmental protection and on the modus operandi is reflected in the *G. Sundararajan* case as follows: "Sustainable Development and CSR are inseparable twins, integrated into the principles of Inter and Intra-Generational Equity, not merely human-centric, but eco-centric. CSR is much more when the Project proponent sets up NPPs, thermal power plants, since every step taken for generation of energy from such hazardous substances, is bound to have some impact on human beings and environment, even though it is marginal. The Department of Public Enterprises (DPE), recently, issued Comprehensive Guidelines on CSR for Central Public Sector Enterprises, which includes NPCIL, to create, through the Board Resolution, a CSR budget as a specific percentage of net profit of the previous year." [108]

Education is another pivotal CSR objective. While schools for the children of employees is a good CSR initiative, the school teachers cannot be treated on par with employees of the company, and are not entitled to equal pay.[109]

Conclusions

Economic support to NPVOs is an essential requisite for their functioning. Land grants by the rulers, nobility, mercantile class and the philanthropists were the earliest and widespread methods of assisting the religious and charitable institutions of various types. Both for establishing the institution and gaining continuous economic support, land became a highly convenient instrument of economic power. Gift economy had incidentally empowered the poorer sections in addition to supporting the benevolent cause. The practice followed for centuries got systematization during the colonial period. It was the accumulation of vast land resources in the RCIs that engendered the problem of the tenancy system and exploitation of the tenants and workers. It was with the abolition of Inamdari, Zamindari and Ryotwari, a big change encompassed the whole system. Social interest in charity and religious institutions had to stand in conflict with social interest in land reform measures which stood for the cause of economic justice to the toiling masses. The yugadharma of constitutional ideology to uphold the cause of socio-economic justice had to prevail. Diversity in state policy prevailed in the matter of extent and method of safeguarding the interests of the 'privileged landlords' in the form of RCIs. In course of time, interests of tenants and distributive justice prevailed over the institutions of culture. A remarkable bouncing back of the community strength in the form of donations of money and movables could elevate the so called 'privileged landlords' from the deep and sudden penury to which they had fallen. The paradigm shift from land based support to the community's donation based support is a big change that expanded people's participation in religious and social service activities. Dharmada supplemented the resource of RCIs by providing modest support through its remarkable combination of business and charity. The idea got a fillip with emergence of the modern concept of CSR. The Companies Act 2013 ushered in a new era of social help from the corporate world. As the hitherto working of the scheme suggests, CSR has great potentiality of providing sustainable support to the NPVO activities, although with inherent constraints.

References

[1] William Blackstone in his Commentaries has observed that the ear liest form of charity consisted of gifts of land for charitable houses. See Sir Asutosh Mookerjee, *The Law of Perpetuities in British India* [Tagore Law Lectures, 1898] (Kolkata: University of Calcutta, 2014) 226.

[2] The problem of encroachment and unauthorised alienation of trust/endowment/waqf property has been a serious one as discussed in supra chapters 6 to 8.

[3] Nasik Inscription of the period makes reference to the same. See Romila Thapar, *History of India* pp. 1 10-111.

[4] Romila Thapar, supra n 3 p 176

[5] Ibid 189

[6] The example of Tanjore temple cited by Romila Thapar provided a variety of services to the people. Romila Thapar, supran. 3

[7] Romila Thapar, *Ancient Indian Social History: Some Interpretations* (Hyderab ad: Orient Longman, 1978) 77.

[8] See the Report of Hindu religious Endowment Commission, Union Government 1960.

[9] Ibid P 13

[10] Romila Thapar, supran. 3 chapters 13 and 14

[11] Ibid 328

[12] *Thirumala Tirupati Devasthanams* v. *Thallappaka Anantha Charyulu* AIR 2003 SC 3290

[13] *Controller of Estate Duty, Bihar* v. *Mahant Umesh Narain Puri* AIR 1982 SC 1153

[14] M Prasanna Kumar, *Dana in the History of Mysore* (Mangalore: Samanvaya Prakashana, 2000)

[15] Ibid 108-9

[16] Ibid 119-259 a detailed narration can be found; for table see 240-47

[17] See 183-186 on grants by Hyder Ali and Tipu Sultan; Prasanna Kumar rejects the idea that Wodeyars favoured vaishnava temples at the cost of shaiva and shakta temples.

[18] Ibid 290-307

[19] Ibid chapter III

[20] Ibid 258

[21] Ibid 248

[22] Devasvantu visham ghoram navisham vishmuchyate I Ekakinam visham hamti devasvam putra pautrakam II" cited in M Prasanna Kumar p 249

[23] Ibid 250

[24] Prasanna Kumar 334

[25] Ibid 327

[26] Ibid

[27] Ibid 331

[28] Ibid 329-330

[29] Ibid 330

[30] Ibid 331

[31] Ibid 332

[32] *Law Relating to Endowments, Inams, Trusts and Wakfs in Karnataka*, Volume 1, (Bangalore: KLJ Publications, 2004)

[33] Narration of contribution by Kings, Officers, nobles, wealthy men and communities in construction, renovation and endowment of temples can be found in the following literature. N Ramesan, *Temples and Legends of Andhra Pradesh* (Mumbai: Bharatiya Vidya Bhavan, 2000) pp 18 (Srisailam), 27-8 (Ahobalam), 39-40 (Lepakshi), 47 (Tadpatri), 51 (mahanandi), 64 (Tirupati), 73 (Kalahasti), 82 (Chezerla), 93 (Amaravathi), 98 (Mangalagiri),100 (Vijayawada), 108-9 (Akiripalli), 112 (Draksharama), 141 (Simhachalam), 147 (Arasavalli), 151 (Srikurmam), 160 (Nizam's grants to Bhadrachalam temple), 170 (Vemulawada); B K Barua and H V Sreenivasa Murthy, *Temples and Legends of Assam* (Bombay: Bharatiya Vidya Bhavan, 1988) pp. 32-5 (Kamakhya), 49 (Vasistashrama); 50 (Umananda), 53 (Ugratara, Sukreswara), 55 (navagraha), 61 (Hajo), 80(Negreting of Shibsagar), 126 (Manjuli Satra); P C Roy Choudhury, *Temples and*

Legends of Bihar (Bombay: Bharatiya Vidya Bhavan, 1988) pp. 4 (Phulher), 11 (Ma Paudi), 39 (Mandar Hill), 49 (Konch), 61 (Mundeswari), 68 (Parsanath), 89-90 (Nalanda), 162-5 (Deoghar), 97 (Patan Devi); G V Rao, Temples and Legends of Karnataka (Mumbai: Bharatiya Vidya Bhavan, 2003); K R Vaidyanathan, *Temples and Legends of Kerala* (Mumbai: Bharatiya Vidya Bhavan, 1982, 2006) 26 (Sri Padmanabhaswamy, Thiruvanthapuram), 62-63 Ambalapuza Krishna, 74-Lord of Ettumanur, 103-4 (Chottanikar a), 109 (Kaladi), 139 (Vadakkanathan), 157 (Temple Rama and Krishna), 159-160 (Tali Temple, Calicut), ; M S Mate, *Temples and Legends of Karnataka* (Mumbai: Bharatiya Vidya Bhavan, 2001) 31-33 (Kohapura), 60-63 (Tulzapur), 116-117 (Pedhe), 128-9 (Bhimashankar), 1443-4 (Tryambakeshwara), 189-90 (Pandharpur), ; R K Das, *Temples of Tamil Nad* (Mumbai: Bharatiya Vidya Bhavan, 2001) 22 (Tiruchendur), 232 (Mahabalipuram), 193 (Shiyali),188-9 (Tanjore); A V Shankaranarayana Rao, *Karnatakada Prasiddha Devalayagalu* (Bangalore: Vasan, 2014) 28 Banashankari, 30 (Pattadakallu), 49-50 (Belur), 54 (Halebidu), 69-70 (Dharmasthala), 110 (Talakadu); G H Ananthanarayanan, *Sri Guruvayur Temple* (Mumbai: Bharatiya Vidya Bhavan, 1999) 19; C Anna Rao, *Administration of Temples* (Tirupati: Tirumala Tirupati Devasthanams, 1998) Part III pp 4-5.

[34] For the proposition that charitable status is a legally privileged status see, Adam Parachin, '*Charities and the Rule Against Perpetuities*' 21 (3) The Philanthropist 256

[35] Sir Asutosh Moo kerjee, supra n 1 p. 233

[36] Ibid 4-5 for discussion on community right theory.

[37] Adam Parachin, supra n 31 p. 269

[38] Sir Asutosh Mookerjee, supra n 1 p. 233-4

[39] Robert G Wolfs, '*Rules against perpetuities and gifts to charity*' 18 Indiana Law Journal (1948) 205 at 206

[40] According to section 14, "No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age the interest created is to belong." Section 16 states, "Where by reason or any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails." As per section 18, "(1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than - (a) the life of the transferor, or (b) a period of eighteen years from the date of the transfer, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

[41] *Lakshmishankar* v. *Vaijnath*, (1882)6 Bom 24.

[42] *Jamnabhai* v. *Khimji Vallubhdas*, (1890) 14 Bom 1.

[43] *Jugalkishore* v. *Lakshmandas*, (1899) 23 Bom 659.

[44] *University of Bombay* v. *Municipal Commissioners of Bombay* (1891) ILR 16 Bom 217.

[45] *Fatmabib*i v. *Nusserudeen*, (1895) 18 Mad 201

[46] *Bibajan* v. *Kaib Husain*, (1909) 31 All 330.

[47] *Morarj*i v. *Nenbai*, (1893) 17 Bom 351; Mariambai v. *Fatimbai*, (1929) 31 Bom LR 135; *Chhotabhai* v. *Jnan Chandra*, (1935) 57 All 330.

[48] *Bhupati Nath* v. *Ram Lal*, (1909) 37 Cal 128; *Juggut Mohini* v. *Sokheemoney* (1871) 14 MIA 289

[49] *Jamshedji* v. *Soonabai,* (1909) 33 Bom 122; also see Darashaw J Vakil, *The Transfer of Property Act* (Ed) Soli Sorabji et al (New Delhi: lexis Nexis, 2009); Solil Paul (Ed) *Mulla The Transfer of property Act*, Ninth ed (New Delhi: Butterworths India); Sajiva Row *Transfer of Property Act*, (Ed)Justice K Shanmukham vol I (New Delhi: Universal)

[50] *Christ's Hospital* v. *Grainger* (1849) 1 Mac. & G., 460

[51] *Hafeeza Bibi* v. *Shaikh Farid*, AIR 2011 SC 1695

[52] See supra Chapter 7.

[53] Available at http://timesofindia.indiatimes.com/home/environment/floar-fauna/Centre-proposes-15-acre-celing-for-plantations/articleshow/24471220.cms visited on 9th April 2016.

[54] At present, there are 4,78,462.46 acres of Dry, Wet and Manavari lands, 22,599 buildings and 33,627 sites owned by religious institutions under the control of the Department of religious and charitable endowments. The Tamil Nadu Government's website indicates 28,382 cases of arrears of rent, settlement of 13, 307 of them and recovery of Rs 11.74 crores out of Rs.28.27 crore. Available at http://www.tnhrce.org/temple.html Last visited on 10.05.2016.

[55] Section 5 of the Act

[56] *Mst Jalika bibi* v. *State of Assam*, AIR 1982 Gau 87.

[57] Section 5 prohibits the practice of leasing in future. Leasing in violation of law would result in vestment of the land in the government under section 58.

[58] section 47 read with section 8

[59] Sri Pandarvaka Lands (Vesting and Enfranchisement) Amendment Bill, 2009

[60] *Travancore Devaswam Board* v. *Mohanan Nair* 2013 decided on 30.5.2013 MANU/KE/0609/2013.

[61] *Naranbhai D Patel* v. *Isubji Dadabhai* AIR 1996 SC 1184

[62] *Manik Vinayak* v. *Pandurang GT* AIR 1987 SC 668

[63] Section 28 of the Orissa Estates Abolition Act, 1951; Mysore (Religious and charitable) Inams Abolition Act 1955; Karnataka (Religious and charitable) Inams Abolition (Amendment) Act, 1979. 1985, 2012; Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948; Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952; West Bengal Estates Acquisition Act 1953; Rajasthan Land reforms and Resumption of Jagirs Act, 1952

[64] Sections 15 and 18 of the Saurashtra Barkhali (Abolition) Act, 1951

[65] Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act, 1950

[66] *Sri Navneetheswaraswami Devasthanam* v. *The State of Madras* AIR 1975 SC 646

[67] Deposition by Sri Anna Rao before HREC; Report p.140

[68] Deposition by other experts see HREC Report p.139

[69] Ibid 140

[70] Ibid 139; deposition by M S Mehta

[71] Ibid; deposition by Mr Phukan

[72] Report of the HRE Commission p.141

[73] *The Abdul Sathar Haji Moosa Sait Dharmastapanam, Trivandrum* v. *The Commissioner of Agricultural Income-tax, Kerala, Trivandrum*, AIR 1974 SC 795

[74] Sec. 81 and 82 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987; Sec. 32 Orissa Hindu Religious Endowment Act, 1969; Sec. 77 & 80 Tamil Nadu Hindu Religious and Charitable Endowments Act; 1959; Sec. 51 & 62 Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997

[75] Sec. 83 and 84 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987

[76] Sections 53 to 55 of the Waqf Act, 1995; also see Rajinder Sachar Committee Report

[77] This philosophy was enunciated by Sri Basaveshwara of 12th century Karnataka

[78] Ibid

[79] Pushpa Sundar (Ed) *For God's Sake: Religious Charity and Social Development in India* (New Delhi: Sampradan, Indian centre for Philanthropy, 2002); Sampradan, *Giving and fund Raising in India* (New Delhi: Sampradan, Indian centre for Philanthropy, 2001); Malcolm Harper, DSK Rao and Ashis Kumar Sahu, *Development, Divinity and Dharma* (Warwickshire: Practical Action Publishing, 2008); the approved budget of TTD in 2015 is Rs 2530 crores out of which the receipt side include Rs 905 crores from the offerings to hundis, Rs 750 crores from Darshan fee, Rs 200 crores from sale of human hair; http://www.thehindu.com/news/national/andhra-pradesh/ttd-approves-rs-2530cr-annual-budget/article7041883.ece visited on 20th March 2016; the four temples of Travancore Devaswam Board had a budget of Rs1000 crores; http://indiatoday.intoday.in/story/Temple+muddle/1/92107.html visited on 20th March 2016; Sri Jagannath temple of Puri had a budget of Rs 239 crores in 2015; income from land Rs 58 crores, building complex Rs 15 crores, others 53 crores, government grant Rs. 110 crores; http://www.newindianexpress.com/states/odisha/Jagannath-Temple-Budget-Rs-239-Cr/2015/03/19/article2720553.ece

[80] *Commissioner of Income-tax (Central), New Delhi* t v. *Bijli Cotton Mills (P) Ltd., t Aligarh* AIR 1979 SC 346; in some regions it is called Mahumai collection, see Sri *Kalishwari Fire works* v. *Commissioner of Income tax*, ITAT Chennai, judgment dated 30/1/2013.

[81] It is also on records that the King of Kota in 1860 recognised collection of dharmada saharnama for all goods entering into municipality, and subsequently it was converted into obligatory tax. But this is not dharmada as charity. See *Municipal Council, Kota, Rajasthan* v. *Delhi Cloth and General Mills Co. Ltd., Delhi*, AIR 2001 SC 1060

[82] *Commissioner of Income-tax (Central), New Delhi t* v. *Bijli Cotton Mills* (P) Ltd., t Aligarh AIR 1979 SC 346;

[83] Section 54 (2) of the Bombay Public Trusts Act, 1950

[84] Section 54 (3) of the Bombay Public Trusts Act, 1950

[85] Section 66 of the Rajasthan Public Trusts Act, 1959

[86] CSR is concerned with treating the stakeholders of the firm ethically or in a socially responsible manner. Stakeholders exist both within a firm and outside. The aim of social responsibility is to create higher and higher standards of living, while preserving the profitability of the corporation, for its stakeholders both within and outside the corporation.

[87] Mathew Hirschland, *Corporate Social Responsibility and the Shaping of Global Public Policy* (New York: Palgrave Mac Millan, 2006) p.7.

[88] Michael Hopkins, Corporate *Social Responsibility and International Development: Is Business the Solution?* (London: Earthscan, 2007)

[89] Harijan, August 25, 1940; Harijan, February 22, 1942. Quoting from Ishopanishad, he said, "Earn your crores by all means. But understand that your wealth is not yours, it belongs to the people. Take what you require for your legitimate needs, and use the remainder for society."

[90] Young India, June 26, 1924

[91] Harijan, June 25, 1938

[92] Cited in *Business Ethics and Corporate Governance* (Hyderabad: ICFAI Centre, 2003) p.150.

[93] John Kenneth Galbraith, *"The Anatomy of Power"* (London: Hamish Hamilton, 1984). p 54.

[94] *National Textile Workers' Union v Ramakrishnan*, AIR (1983), SC 75. Per P N Bhagwati J

[95] Kautilya viewed that sukhasya moolam dharma and dharmasya moolam artha, which meant that property shall be subordinated to dharma in order that happiness shall result. See Shama Shastri (Tr), *Kautilya's Arthashastra* 8th ed (Mysore: Printing and Publishing House, 1967)

[96] Available at http://www.mca.gov.in/Ministry/reportonexpertcommitte/chapter1.html Last visited on 21/3/2016.

[97] Such companies included ITC, ICICI Bank, Airtel, Mahindra & Mahindra, Reliance, BHEL, Pepsico etc. See Mansie Shah, Emerging trends in Corporate Social Responsibility. *Company Law Journal*, 2009, p 171-172. Also see N R Narayana Murthy, *A Better India A Better World* (Gurgaon: Penguin, 2010) 216-18.

[98] Available at https://www.oecd.org/corporate/mne/1922428.pdf Last visited on 23/3/2016.

[99] Section 135 (3) of the Companies Act, 2013.

[100] Section 135 (4) of the Companies Act, 2013.

[101] Section 135 (5) of the Companies Act, 2013.

[102] Proviso 1 and 2 of Section 135 (5) of the Companies Act, 2013.

[103] *G. Sundarrajan* v. *Union of India*, AIR 2013 SC (Supp) 615

[104] As referred in Rule 4 (1) of Companies CSR Rules, 2014; one-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

[105] Available at http://www.snehamumbai.org/contribute/corporate-social-responsibility-(csr).aspx; On the higher side it is estimated to be Rs 20,000 crores. See https://www.pwc.in/assets/pdfs/publications/2013/handbook-on-corporate-social-responsibility-in-india.pdf Last visited on 23/3/2016

[106] Available at http://economictimes.indiatimes.com/news/company/corporate-trends/mahindra-mahindra-tops-csr-list-in-india-even-as-companies-scale-up-operations/articleshow/49330470.cms Last visited on 22/3/2016.

[107] For rules see http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf visited on 22/3/2016

[108] *G. Sundarrajan* v. *Union of India*, AIR 2013 SC (Supp) 615 at para 104

[109] *National Aluminium Co. Ltd and Ors*. v. *Ananta Kishore Rout*, AIR 2014 SC (Supp)1469

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