

SOCIO-LEGAL RESEARCH AND ITS SIGNIFICANCE IN ASCERTAINING CORPORATE SOCIAL RESPONSIBILITY

*Rajdip Bhadra Chaudhuri*¹

I. Introduction

Law and society interplay has led to the development of law since centuries. From a jurisprudential view point we can observe emergence of various schools of law that evolved based on a particular political situation existing in a particular state. There lies the nexus between law and society. Law tends to mould its course as per the desire of the society. However, philosophers have always been affected by the situations governing their lives and this has definitely led to the development of law and jurisprudence.

To substantiate my statement we can observe the evolution of different schools of law from the Aristotelian era namely Natural school, Historical school, Analytical school, Philosophical school, Sociological school and the Realist school. A paradigm shift with regard to the purpose of law, its definition and scope and its utility can be perceived from the emergence of various schools of law. A notion that law is the command of the sovereign slowly modified its course to a humanitarian perspective where we can find a rigorous interplay between law and society. Thus, in the twenty first century we have a nuanced definition of law with reference to the development of the sociological school. The law and society discourse has led to a particular notion that law should look into the needs of the society and thus the sociological jurists regard the working of the law rather than abstract contents of authoritative precepts. We can find a functional approach taken by the sociological jurists while analyzing legal institutions, doctrines and precepts. It can be deduced that with the evolution of sociological school a new concept i.e. *social purpose of law* evolved.

However, with the development of sociological school, an interdisciplinary study was necessitated. It was evident that law while responding to the societal needs entered the domain of sociology and thus a scientific approach towards legal studies emerged. This scientific temper blurred the domain of two distinctive field i.e. sociology and law and gave birth to a socio-legal approach while addressing the problems of societal change. The field of study particularly law and society does not have a long history. Perceptive jurists in the early nineteenth century were hardly blind

¹ Research Assistant, West Bengal National University of Juridical Sciences, Kolkata.

to the fact that laws did not execute themselves and that politics played a vital role in the passage of statutes. A systematic study began in the late nineteenth century and in the writings of social theorists including Karl Marx and Emile Durkheim, traits of functioning of the legal system can be found. The approach was pioneered by Eugen Ehrlich, who investigated 'living law' in the corners of Austro-Hungarian Empire.² With a brief glimpse at the historical background we can say that, Socio-Legal research attempts at evaluation and analysis of social factors bearing on very specific legal situations.³

The notion 'socio-legal research' and 'corporate social responsibility' may sound like to separate fields but the former can be utilized to understand the development of the later. This discipline of socio-legal study can facilitate in studying the development of corporate laws in a particular jurisdiction also. It is through a social survey of the various stakeholders, the researcher can understand the effectiveness of laws prevalent in the country. A social survey may also help to analyze a particular legislation or a policy adopted by the government. The society in broad terms includes citizens, corporations and various authorities. Thus study of individuals, corporations, firms, non-governmental organizations and governmental authorities shall also constitute a sociological study as it becomes relevant and beneficial to an existing society.

The author would take an example of Corporate Social Responsibility (CSR) and try to analyse the utility of Socio-Legal research in the specified field. CSR has been a developing area in the 21st century. More socially responsible behavior is expected from the corporations to survive in the international community. It is through social survey only a research can find out the accomplishment of such a goal has been attained or not. The paper revolves around the historical development of socio-legal research, the utility of having such a discipline of research and the functional approach of law leading to a better understanding of legal environment prevalent in a particular society. The researcher also tries to analyze the advantage of Socio-Legal research conducted in the field of Corporate Social Responsibility.

II. Historical Insight of Socio-Legal Study

The growth of socio-legal study necessitated an interdisciplinary approach. Emergence of sociological jurisprudence took place. Describing

² Lawrence M. Friedman, *Coming of Age: Law and Society Enters An Exclusive Club*, 1 Annual Review of Law and Social Science December (2005)

³ Dorothy Swaine Thomas, *Some Aspects of Socio-Legal Research at Yale*, 37 American Journal of Sociology 2 September (1931)

the development of sociological jurisprudence Selznick has written that its “*premises ... achieved a rather quick and general victory ... This victory ... has had little to do with actual researches of sociologists. But research has been wanting. This is the kind of problem that can be approached in many ways, but it surely demands both a broad theoretical perspective and an emphasis on social needs.*”⁴

The contentions raised by Selznick did not go unanswered. Theoretical perspectives have developed from a number of sources. Repeated analysis of sociological thoughts of Durkheim,⁵ Weber,⁶ Marx⁷ and Tonnies⁸ by other scholars was the initial, and remains a continuous stimulus. This has nurtured the inquiries about relationship between law and social and economic order. These inquiries led to grand theory about the place of law in social theory, as depicted in the writings of Unger and Hayek, to the explorations of types of social control by state in the form of policing and non state actors in the form of industry.⁹

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Perceptive jurists in the early nineteenth century were hardly blind to the fact that laws did not execute themselves and that politics played a vital role in the passage of statutes. A systematic study began in the late nineteenth century and in the writings of social theorists including Karl Marx and Emile Durkheim, traits of functioning of the legal system can be found. The approach was pioneered by Eugen Ehrlich, who investigated ‘living law’ in the corners of Austro-Hungarian empire.¹⁰ With a historical background we can say that, Socio-Legal research attempts at evaluation and analysis of social factors bearing on very specific legal situations.

⁴ Merton, Bloom & Cottrell, *Sociology Today* (1959)

⁵ S. Lukes & A. Scull, *Durkheim and the Law* (1983)

⁶ R. Cottrell, *Legality and Political Legitimacy in the Sociology of Max Webber* in *Legality, Ideology and the State* (1983)

⁷ M. Cain & A. Hunt, *Marx and Engels of Law* (1979)

⁸ E. Kamenka & A.E.S. Tay, *Beyond Bourgeois Individualism: The Contemporary Crisis In Law And Legal Ideology* in *Feudalism, Capitalism and Beyond* (1975)

⁹ M.A. Freeman, *Llyod's Introduction to Jurisprudence*, Sweet & Maxwell, London (7th ed., 2001)

¹⁰ Friedman, *supra* note 1

III. Gradual Development of Socio-Legal Scholarship

It was Eugen Ehrlich, an eminent jurist, who formulates the social basis of law. According to his thought law is derived from social facts and depends not on state authority but on social compulsion.¹¹ The real source of law was questioned by Ehrlich. He viewed that the statutes or reported cases were not the real sources of law but the activities of the society constituted the law. A shift from analytical jurisprudence to facts based studies, exploring the real foundations of legal rules, their scope and meaning and potential development, has been propounded in his works. Thus, as mentioned earlier Ehrlich was the first to undertake empirical surveys to substantiate his thesis.¹² Living in part of the Austro-Hungarian Empire where there were more than nine different ethnic and religious groups, “*he had his students investigate the ‘practices and attitudes of nearby communities, using an original but rather primitive personal interview questionnaire’.*”¹³

Similarly developments took place in other parts of the globe as well. The sociological approach to law struck a particular responsive chord in the United States in the early part of the twentieth century. The rapid expansive nature of the American society, its material wealth, and its devotion to scientific research, gave rise to a notion that the basic problem laid with adequate controlling and distribution of wealth. The solution could best be attained by the application of developing social sciences.

Amongst the American sociologists, Roscoe Pound was one of the chief proponents of American sociological knowledge of law. According to Pound, jurisprudence is not so much a social science as a technology and the analogy of engineering is applied to social problems. The primary concern of his work is the effects of law upon society and only to a lesser extent with questions about the social determination of law. For Pound social engineering was “*descriptive of a neutral process rather than prescriptive of pragmatic reform. It meant only that law was shaped in accordance with social ends, it did not define particular ends or means of attaining them.*”¹⁴ A new approach known as the ‘functional approach’ through a practical program by accumulating factual information and statistics for establishment of an adequately equipped Ministry of Justice was proposed.

However, little empirical study was conducted by Pound but his contemporaries undertook empirical research on substantive legal problems rather than the working of legal institutions. The contemporaries of Pound

¹¹ W.L. Moll, *Fundamental Principles of the Sociology of Law*, Harvard University Press, Cambridge, Mass. (1936)

¹² Freeman, *supra* note 7

¹³ Neil O. Littlefield, *Eugen Ehrlich’s Fundamental Principles of the Sociology of Law*, 19 *Maine L. Rev.* 1 (1967)

¹⁴ David Wigdor, *Roscoe Pound: Philosophy of Law* (1974)

namely Talcott Parsons, Lasswell, McDougal, Selznick, Cotterrell, Nelken, Trubek, Niklas Luhmann, Brian Z. Tamanaha not only channelized the social engineering approach and conducted resourceful empirical study for the development of the school but also strengthened the philosophical foundation of the doctrine. Slowly, we can notice that the skills of an academic lawyer and sociologists were synthesized with regard to adaptation of methods. This laid down the foundation of a systematic investigation into societal problems. The term 'sociological jurisprudence' faded with development and new dimension known as 'socio-legal studies' took its place.

The advocates of socio-legal studies emphasize the importance of placing the law in its social context by using social-scientific research methods. They recognized that many traditional jurisprudential questions were rather empirical than conceptual.¹⁵

We can now, after having an overview of the historical background of evolution of Socio-Legal research and its utility in modern societal change, move on to apply the method to a specific field of study and understand the effectiveness of the discipline for example Corporate Social Responsibility.

IV. Corporate Social Responsibility: Conceptual Analysis

Business performs a number of roles in the society, but this role changes with time. With time, the role of business in the society alters but these changes centre on the economic and social role of the firm, its owners and those with a stake in the venture. Unless the enterprise performs the economic functions, it will not have the resources to perform the other roles. Therefore, primarily the essential element is profit that shall induce an organization to serve the society apart from its regular business tasks.

From this concept of utility of profit evolves the idea of business ethics and corporate governance, which requires the business entity to be transparent in its activities for the interest of the stakeholders. For example, the Sarbanes Oxley Act, 2002 was legislated to provide more transparency and accountability of the corporations in United States of America after the Enron Scandal.¹⁶ The role of corporate governance was tightened for the interest of the stakeholders. Thus, corporate governance exists to synergies the economic and social returns by creating harmony between individual and common goals.

¹⁵ J.P. Gibbs, *Definition of Law and Empirical Questions*, 2 Law and Soc. Rev. 429 (1968)

¹⁶ Mridha Sujana, *Oxley Act*, available at https://www.academia.edu/4519534/Oxley_Act (Last visited on February 06, 2015)

According to the writing of Jean Jacques Rousseau in 1762, in the tradition of Hobbes and Locke, society and corporations must coexist and contribute to the well-being of each other.¹⁷ Now from the theories of business ethics and corporate governance generates the concept of corporate social responsibility. It should not be forgotten that with great power comes great responsibilities and in the 21st century power not only seems to be in the hands of the government but also lies with the multinational corporations who are capable of influencing major policy decisions of the government.¹⁸

Later on in the words of Benjamin Franklin, “*Doing good is not a private act between a bountiful giver and a grateful receiver; it is a prudent social act.*”¹⁹ Similarly, according to our Father of the Nation, Mohandas Karamchand Gandhi, one holds large wealth only as a trustee of the society.²⁰

The term Corporate Social Responsibility refers to the concept of business being accountable for how it manages the impact of its processes on stakeholders and takes responsibility for producing a positive effect on the society. It is what an organization does, to positively influence the society in which it exists. It could be in the form of community relationship, volunteer assistance programmes, special scholarships, preservation of cultural heritage and beautification of cities.²¹ The philosophy is basically to return to the society what it takes from it, in the course of quest of creation of wealth.

Essentially, CSR is an inter-disciplinary subject in nature and encompasses in its fold²²:

1. Social, economic, ethical and moral responsibility of companies and managers,

¹⁷ Jean Jacques Rousseau, *The Social Contract or Principles of Political Right*, 1762 (G.D.H. Cole translated).

¹⁸ B.C. Bhattacharya, S. Sen & D. Korschun, *Using corporate social responsibility to win the war for talent*, 2 MIT Sloan Management Review 49 (2008)

¹⁹ Jayantee Saha, *Management and Organisational Behaviour*, Excel Books India (2006)

²⁰ Sundar Sarukkai, *JRD Tata and the Idea of Trusteeship*, available at http://eprints.manipal.edu/78163/1/Zoroastrianism_JRD_Tata_%26_the_idea_of_trusteeship_SS-textbook.pdf (Last visited on February 06, 2015)

²¹ *Corporate Social Responsibility Initiatives of NSE Nifty Companies: Content, Implementation Strategies & Impact*, available at <http://nseindia.com/content/research/Paper84.pdf> (Last visited on February 06, 2015)

²² N. Gopalsamy, *A Guide to Corporate Governance*, New Age International (P) Limited, New Delhi, (1st Ed., 2006).

2. Compliance with legal and voluntary requirements for business and professional practice,
3. Challenges posed by needs of the economy and socially disadvantaged groups, and
4. Management of corporate responsibilities activities.

The World Business Council for Sustainable Development has proposed a definition of Corporate Social Responsibility as “*Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to the economic development while improving the quality of life of the workers and their families as well as the local community and the society at large.*”²³

Recently the Government has incorporated the CSR provisions in The Companies Act, 2013 where the companies have to create a Corporate Social Responsibility Committee that shall foster CSR activities on behalf of the companies. Section 135 of the Act states that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board. It shall consist of three or more directors, out of which at least one director shall be an independent director.²⁴ As per Mr. Chaitanya Kalia, Partner, Advisory Services, Ernst and Young nearly 4000 companies shall reach the threshold limit as mentioned in Section 135 and shall have to compulsorily engage themselves in corporate social activities.²⁵

V. Socio-Legal Research and CSR

A proper Socio-Legal study is necessary to understand the effectiveness of the policy in the present Indian scenario. Socio-Legal scholarship locates legal practices within the context of other social practices which constitute their immediate environment. It comprehends a multifaceted discipline involving administrative, commercial, economic, medical, psychiatric and other branches, wherever they impinge and interact

²³ World Business Council for Sustainable Development, *Meeting Changing Expectations – Corporate Social Responsibility*, available at <http://www.wbcsd.org/pages/edocument/edocumentdetails.aspx?id=82&nosearchcontextkey=true> (Last visited on February 08, 2015)

²⁴ Section 135 of The Companies Act, 2013, available at <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf> (Last visited on February 08, 2015)

²⁵ *Cos Bill 2012: Corporate Social Responsibility*, available at http://thefirm.moneycontrol.com/story_page.php?autono=829408 (Last visited on February 08, 2015)

with law. Similarly, Socio-Legal studies subject legal practices to an empirical inquiry which scrutinizes not merely the legal articulation of the relevant rules and processes but the meaning and effect of those rules and processes as interpreted and enforced and experienced by their subjects.²⁶

Thus, we can say that sociological approaches to law are diversified but helps “*to understand legal doctrine and legal institutions in terms of their social, economic and political environment; and to design inquiries as to contribute to a deeper understanding of legal doctrine and legal institutions in general in the variety of societies and social settings in which legal phenomena exist.*”²⁷

The study of society and working of organizations can be ascertained through a Socio-Legal research. Keeping in mind the political milieu of our nation where democracy is getting confined to only the letters of law, a proper social survey of the existing social activities performed by corporations can give us a clear picture of the ground realities of social obligations performed by companies. The views of the representatives of companies are equally important because if a notion of burden is engrained in their mind with regard to creation of a separate fund with engagement of directors and compulsorily giving 2 percent of their profit for social purpose, the consequences can be drastic. Through social survey of designated officials of various companies and applying the interviewing or questionnaire technique, we can ascertain the existing mindset of the corporations and whether they treat the policy as a welcome measure or it is ultimately burdensome.

Socio-Legal method shall facilitate in bringing out the ground reality of acceptance of the new policy. A social survey can also be conducted on NGOs in order to understand the social activities performed by companies philanthropically through them. This can also assist us in ascertaining the existing philanthropic activities conducted by the companies.

A Socio-Legal research showing total expenditure spent by a company on social causes can help us to understand the motives of companies as well as the kind of legislation we require for such activities. Similarly, conducting another set of field survey of the general masses living in the vicinity of the companies’ manufacturing units or place of business may help to reveal the actual work done by them.

²⁶ Nicola Lacey, *Normative Reconstruction in Socio-Legal Theory*, available at <http://www.uk.sagepub.com/cross/files/Chapter10-Article2.pdf> (Last visited on February 09, 2015)

²⁷ Roger Cotterrell, *Law’s Community: Legal Theory in Sociological Perspective*, Oxford University Press, United States, (1995).

VI. Conclusion

Socio-Legal research can be an effective method of studying behavior of companies and the temper of the corporate sector for being socially responsible. The engagement of funds for social programs can also be ascertained and even whether the proper utilization of the funds is happening in reality can also be evaluated. The method of socio-legal study shall definitely help us to understand the relevance of the enacted law in its nascent stage. The conflict of law and morality shall always prevail, as the actors of the state shall incessantly try to infiltrate into the subjects of morality and bring them under the purview legal obligation. When a moral domain is tested in the existing society, socio-legal scholarship shall lead us to lay down the standard of assessment.

The moral obligation shall rise out of own assessment of present scenario by a company. The surge of moral obligation can be compared with the Shakespearean 'mercy' whose quality is not strained and drops as a gentle rain from heaven upon the place beneath. It is mightiest in the mightiest and becomes the throned monarch better than his crown.²⁸ The socio-legal research shall facilitate us in understanding whether the free flowing nature of the companies shall be perturbed with the compulsory CSR policy enactment. The philanthropic CSR agenda has worked out to be effective in the western part of the globe and many Indian companies have relatively contributed to social and environmental development projects which are noteworthy. A classical Indian example of the CSR activity is the ITC E-Coupal²⁹ which is designed to tackle the challenges posed by unique features of Indian agricultural sector.

Thus in order to test an existing legislation conducting a research through socio-legal methods can be effective in its outcome. The impact of a particular policy on the society at large and the various elements constituting the society can be studied in actual circumstances. Based on the reactions of different categories of subjects the behavioral pattern can be determined and thus ultimately be useful in predicting the factual situation or the ground reality.

²⁸ William Wordsworth, *The Merchant of Venice*, Wordsworth Editions Limited, Great Britain, 2000

²⁹ Kaushik Mukherjee, *Corporate Social Responsibility*, available at [http://www.taxmann.com/TaxmannFlashes/Articles/\[2010\]103SCL00067\(MAG\).htm](http://www.taxmann.com/TaxmannFlashes/Articles/[2010]103SCL00067(MAG).htm) (Last visited on February 12, 2015)