

CIB on wings



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Initiatives of Change
Caux Initiatives for Business

Dear Readers,

We felt it would be of interest to you to read a couple of speeches that were delivered at the Indo-Japan Business Workshop on Corporate Social Responsibility. Most of you would have read of this workshop that was held at Asia Plateau, Panchgani from November 13 to 15, 2014 in our past issues of CIB on Wings.

In this issue, we bring to you the speech by Dr. Bhaskar Chatterjee, (IAS Retd.), Director General of IICA, Ministry of Corporate Affairs - Government of India that was shared at the Inaugural session of the Workshop.

The Mumbai Chapter of CIB India had its ninth meeting on January 3, 2015. Following this, there was an IofC monthly meeting where those who attended were treated to an interaction with the Director General, Anti Corruption Bureau, Praveen Dixit.

We hope what we have included in this monthly update will be of interest to you.

Mrs. Ishika Banerjee

The Need for CSR as a Law in India

A speech delivered by Dr. Bhaskar Chatterjee, Director General, IICA, Ministry of Corporate Affairs, Govt. of India, at the Indo-Japan Business Workshop at Asia Plateau, Panchgani on November 13, 2015



Let me begin by thanking Sarosh (*Sarosh Ghandy, Director, CIB*) for giving me the opportunity to be here and Mr. Yano (*Hironori Yano, Chairman IofC Japan*), for his very enlightening remarks and of course to Asia Plateau for giving me one more opportunity to talk about CSR.

Let me say that the speakers who have preceded me today have truly set the tone about what I'm going to say to you. When Sarosh spoke about the philosophy of the Tatas, he encapsulated the very spirit of CSR and I must say I owe a deep debt of gratitude when I began my study on CSR, I began with the Tatas. They are an exemplary company in India which really stood for social good. Mr. Yano in his presentation said that corporations can contribute to the economic, social and environmental progress of the nation. So that is what CSR is all about.

Let me make a confession. About 5 years ago, I could spell CSR only because it was an acronym. I had absolutely no idea what it was about. But from then on to this day, I am more or less seen as the CSR evangelist of this nation and that happened because in the way that I saw business, industry, corporations and companies, it occurred to me that the social obligation was something that companies must keep in mind. Sarosh rightly said this is not about charity or donation or

hand-outs nor the distribution of freebies. This is about genuine work with the disadvantaged, the poor and the marginalised of our country. This is also very relevant because India has very low indicators in many areas such as education, health, nutrition, women's empowerment etc. There are many areas where India is deeply disadvantaged.

We could say that the government is helping in all of this in any case and all of us pay taxes to the government to remove poverty. So why is it important that corporates and companies join this effort? That is the fundamental question! The answer is that the government can do this indefinitely for a very long time and it is possible that one day because of the government alone we might become a developed nation. But if corporates and companies also join the effort, perhaps our journey to development would be that much shorter. Corporate India and companies also have strengths that the government does not. They are primarily about efficiency, being the bigger bank for the buck; they are about bringing innovation, change, monitoring closely and actually delivering at the ground level. Government has many constraints in the way it functions – political, financial and administrative and we expect that when companies join the development process, they will bring in the strengths which the government does not presently have. It is because of

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these reasons that we thought of CSR as something that will take place hand-in-hand. But we also

realised that in our view of CSR we must develop an Indian model that is by India, for India and in India. Because when you talk about CSR, there are a million interpretations – an American, European ...there could well be as many interpretations as there are human beings. Each time I ask someone their opinion about CSR, I get a different answer. So how does one come across a unified definition of CSR? How would you put it into practice?

When you are writing guidelines for a whole sector, like the public sector, or writing an act or legislation, you are writing for the entire nation. Therefore, you must be very careful about what you write and

its implications as it will affect the entire development process.

Having said that, we decided that charity must really begin at home in the true sense. If we could bring CSR to the public sector government companies and they could set a benchmark, then that could begin the process. The guidelines could first become applicable to government

companies; then to the government itself. This would set the standard and benchmarks. If we then took it to the private sector, they wouldn't be able

With the public sector you can issue government guidelines ... Why? Because a public sector is duty bound by government guidelines. Is the corporate sector duty bound to follow them? No! This is because the private sector will not care about guidelines issued by the government.

to say that they won't do it. That is why from the April 1, 2010, the first ever guidelines ever issued in the history of the world came about for the Indian Public sector. Those guidelines ensure not that CSR should become compulsory for the public sector but it becomes incentivised so that the executives of the public sector take home twice or 3 times their salaries if they perform well in CSR. That was the principle achievement of the years between 2010 and 2012.

Public sector executives who excelled in CSR as a measure of their performance at the end of the year were actually able to double or triple their salaries. Hence it began not as a measure of compulsion but as a measure of incentives. That went on till finally the Company's Bill (now called an 'Act') was being drafted. Towards the end of 2012 and that is when the Department of Public Enterprises and the Ministry of Corporate Affairs got together and said, "Now it is high time to extend CSR provisions to the private sectors".

Here then lies the dilemma.

With the public sector you can issue government guidelines ... Why? Because a public sector is duty bound by government guidelines. Is the corporate sector duty bound to follow them? No! This is because the private sector will not care about guidelines issued by the government. So in the Corporate Affairs Ministry although guidelines had been

issued, we now decided that it must become the law of the land. That is how the idea of legislation for CSR began. This Company's Act, one of the finest in the world, has 470 clauses. Out of those, only ONE is related to CSR. So we had to be very careful while drafting it.

First of all, which company should do CSR? Should every registered company in India do CSR? Or should we have a threshold of Companies which were making profits. Only those Companies which satisfy, not all, but any one of the criterion is now required to do CSR.

Let's do a comparison between India and Japan.

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attracted by this Act. This is barely 1.5 – 1.6%. The Companies making high profits are asked to part with a small fraction of their profits to help benefit society and yet in the Parliamentary debate when the Company's Act was passed, 10 hours of debate took place, of which 8 hours was devoted to Section 135, related to CSR. Though it's a simple Act, Corporates have many questions. Some of them are as follows:

Q1. If government wants to take our money / profits, why not just make it a tax?

Q2. What does the government mean by CSR?

Q3. How much did you spend on CSR?

All 16000 Companies tell me they are already doing CSR. What's new? We do not need an Act; we do it anyway. But on being asked how much they spend on CSR, they need to ask their CAs / CSs. India is the first to ask its companies how much do they spend on CSR.

Why doesn't a company reveal what it spends on CSR? The reasons are that the companies will be questioned as to why they spent so little despite making huge profits. Another question might be what did the company do with the amount?

I can tell you about the turnovers, net worth, and profits of the 1

million Companies since these file financial returns. Every Registrar of Companies surveys it. But when it comes to CSR, they can't tell you because they don't have to. So now because of the Act, they will have to.

A Chairman once asked me what the 250 public sector enterprises were doing for CSR. I had no answer as there were no figures or tally. I could answer if there was a mechanism to calculate it. So a mechanism was created.

If you are one of the 16000 Companies that fall under this, you must have a CSR Committee. In that Committee you must have 3 members, all of whom should be members of the Board. One of those members should be an Independent Director and not a relative of the Company so that he can take independent decisions. According to Sec. 135 (2), all members should reveal their identity, faces, Identity No. which is put up in the Annual Report. If anything goes wrong, they are personally liable. This Committee will also make CSR policies. It will recommend the amount of expenditure that will be made and also monitor the CSR policy.

But what is so special about this policy? Why is it different?

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Fun lies in the drafting! Insert words in the law which nobody can get around.

Because you "shall"! This shall indicates no will, no how. This is the only policy that says that every activity that you do in CSR, you must list and put up on your website and show it in the Director's Report.

Now suppose you are one of the 3 members. How many activities will you include in your policy if you are a member who will monitor every activity? Only a handful – 5, 10, 15 may be? Suppose you list out 10. Sec. 4(b) says, 'Shall ensure that the activities that are included are undertaken'. In this case, one might say that he did his best but it's not his fault if it didn't work out. It is an Act of Parliament and hence one cannot get away by saying so.

The biggest Company in India, Oil & Natural Gas Commission (ONGC), has a CSR budget of Rs.657 crores (USD 110 Million) and 12000-14000 activities. Even if one goes wrong, the members will be responsible. That is why the strategy for CSR is very important. Now, one will take large and long term projects that leave lasting impacts and value on the ground. That is the purpose of this legislation.

What if one decides that his company will not follow the CSR guidelines. Is that possible? The answer is, Yes!

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Former Member of Parliament, Yashwant Sinha once told us that companies and

industries do not like the policies and that the government is forcing this on them. All members in the Parliament wanted to make it mandatory as according to them all corporations were thieves. Earning profits was their only motive. On hearing this, the Chairman decided to find a middle path which was 'Comply or Explain'. If one cannot spend the 2% on CSR, then this should be explained in the Directors' Report.

Steve Jobs was once asked by his 600 employees to build a Town Hall. His reply was, "I pay my taxes." When he said this, he had 60 Tax Consultants in his payroll.

A few points on CSR:

- It must be measureable
- No abstract activity is considered CSR
- It must bring direct benefits to the marginalised, poor and deprived
- It should not benefit the employees of the Company
- Mere donations do not count as CSR

At the end of the year, if a Company has done its CSR, they need to file a report to the Government and before its shareholders in its Annual Report. CSR should be outsourced to an NGO, a Trust or a Not-for-Profit Company under Section 8.

CIB (India) Mumbai Chapter

Ninth Meeting Report

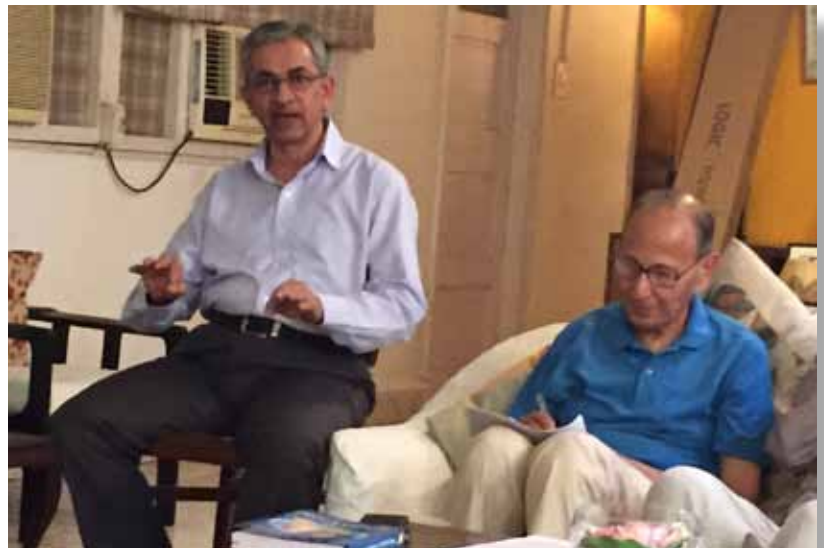
January 3, 2015

Venue: Kumaram, Worli Seaface

Kicking off the New Year with a review of the plans of the CIB Mumbai Chapter, the small team that gathered at Kumaram went over of what action was taken in the previous two months with regard to reaching out to the students of Management Institutes, some public bodies and the Thane-Belapur Industries Association. It was revealed that the Head of HR College was willing to speak to the responsible people in the Business House that lead its chain of Management Institutes to permit CIB to conduct on a regular basis sessions that could promote and encourage the importance of values and ethics in business.

In addition, it was also felt that efforts should be made to meet with the Travel Agents Association of India, Western Region (TAAI-WR) and the Rotary Club, Thane to explore how meetings can be held with their members too.

The four-some while having missed the other Chapter members remembered Prof Virendra Shukla in his time of loss as Anil Chopra shared of the death of the Professor's brother. Grateful for the presence of Vijay Paranjape, former Group Director and Executive VP and CEO of



Industry Sector, Siemens Ltd.; Anoop Sehan, VP, Sharaf Travels; and Ms. Rekha Shahani Jagasia, Principal, Kamala High School, Anil requested them to stay on for the IofC meeting that was to follow saying, "Dr. R K Anand has invited a special guest to speak on a topic with the same

theme that CIB focuses on.”

At the IofC meeting that followed, Praveen Dixit, Director General, Anti-Corruption Bureau (ACB) was introduced and invited to share his views on the multiple facets that reveal itself in the world of corruption and what citizens can do along with the ACB to minimize corruption in India.

Vivek Asrani, MD, Kaymo Fastener Company; Rajendra Gandhi, Vice Chairman & MD, GRP Ltd.; and Tapan Parekh, Director, Dot Solutions were among the CIB members who attended this meeting along with many regular IofC participants.



Mr. Praveen Dixit shared how making many basic functions of the government accessible to the citizen of India through online portals is bound to lead to greater transparency and minimize the possibility of corruption.

In his view, the automation of transactions relating to property sale/purchase and even renting will reduce the circulation of black money. He further stressed on the fact that a similar process for filing a police First Information Report (FIR) would also increase transparency in functioning.

Mr. Dixit felt that today society is plagued with the self-centered mentality of individuals, devoid of a mindset beyond oneself, who wastes resources for non-useful purposes. He provoked his listeners by giving an example of how government officers have developed a technique

to collect bribes. “It is out-sourced,” he said plainly. Agents, who make themselves available outside the concerned office to “assist” the hapless citizen with their work, charge a fee for getting work done. This has now prompted authorities to develop the



processes made available online, thus dissuading people from using agents to deal with government agencies.

Recalling a raid carried out by the ACB on a couple in the state of Maharashtra, Mr. Dixit shared the uncovered undisclosed property and assets worth Rs.300 crores (USD 50 Million).

Praveen Dixit offered direct access to his department through the website: <http://acbmaharashtra.gov.in/> which he said is received immediately. He also shared the hotline number 1064 which is easily reachable for any complaints of any corrupt practice being faced by any IofC associates or the public at large. Revealing the new regulation that is being considered, Mr. Dixit said that his department plans to ensure that a fixed number of cases are settled in a defined duration. Sharing that the details of the respective ACB officials are now being displayed at all major government establishments he divulged that this was for reporting the cases of corruption that is being faced by the public at large. Mr. Dixit also assured that the identity of the complainant would be kept confidential and would be provided all possible protection, if necessary.

In a question-answer mail that focused on – (a) How can the citizens

help ACB? and (2) How can ACB help the citizens fight corruption, the DG, Anti-corruption Bureau? – the department provided the following response that many in India will find useful.

Q. How best can lay-public help in your enormous responsibilities?

To curb corruption, people should come forward and report about the corruption. People can lodge complaint by dialling 1064 Toll Free number and through Facebook page, website and email. ACB proposes to launch Mobile Apps to lodge complaint easily. Every citizen should come forward in the crusade against corruption.

Q. How can NGOs help your cause by voicing the need for officers with unimpeachable integrity getting posted to the Bureau; giving better incentives and perks to the officers and addition of technically skilled staff to add to the Bureau's strength; providing more financial resources to train your staff in ethical leadership; to hire outside agencies like CAS, Income Tax experts and to fill the existing vacancies etc.?

Officers are posted to ACB from Maharashtra Police force after verifying their character/ integrity, on one step promotion such as (Asst. Commissioner of Police) ACP to Addl. SP (Superintendent of Police), (Police Inspector) PI to ACP (Asst. Commissioner of Police) and (Asst. Police Inspector) API to PI (Police Inspector). We also welcome volunteer trainers; who are expert to train our staff in soft skills. NGOs are also welcome to provide training to ACB officers to boost their morale and make them technically strong.

Q. How to assist the Bureau in obtaining / persuading reliable and credible witnesses for prosecution?

Most of the witnesses other than complainant involved in ACB trap cases are government servants.

Q. How to help in recording and reproducing incriminating evidence that becomes a source report to nab the culprits?

Report the corruption related activities to ACB office. Record audio/ video activities of corruption and send it to ACB on acbwebmail@mahapolice.gov.in, www.facebook.com/MaharashtraACB on mobile App www.acbmaharashtra.net (under preparation).