



Creating Conversations: From CSR Practice to Precept

Workshop Report



The Institute for
Law and Philanthropy
Buchmann Faculty of Law
Tel Aviv University



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Workshop Report

9th& 10th February, 2019
At NALSAR University of Law, Hyderabad

Organized by

Center for Corporate and Tax Law,
NALSAR University of Law, India
and

The Institute for Law and Philanthropy,
Tel Aviv University Law School, Israel



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Law and Philanthropy**
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Creating Conversations: From CSR Practice to Precept

Corporate Social Responsibility is an ever-evolving concept. Only recently, John Elkington, who coined the Triple Bottom Line Concept 25 years ago has written:

“Fundamentally, we have a hard-wired cultural problem in business, finance and markets. Whereas CEOs, CFOs, and other corporate leaders move heaven and earth to ensure that they hit their profit targets, the same is very rarely true of their people and planet targets. Clearly, the Triple Bottom Line has failed to bury the single bottom line paradigm.” – John Elkington, HBR, June 2018

And yet amidst progressive pressure of adopting sustainable business practices, corporations continue to operate under the constant gaze of their customers, employees, creditors, shareholders, government and society. The challenge is to attain a breakthrough and create a strategic framework leading to sustainable and accountable corporate activity.

In this context, it is therefore imperative to closely study CSR opportunities and critically question approaches of the executives as well as the society towards CSR. What is the right approach to foster this coming together of forces? Can CSR offer possibilities of ‘smart partnering’ between business and society and thereby creating solutions on key areas of influence? Does a top-down approach work? Or is collaborative, network more feasible?

India adopted a Mandatory CSR (MCSR model) by virtue of Section 135 of its Companies Act 2013 and thereby requires corporations satisfying specific size or profit thresholds to spend a minimum of 2% of their net profit on CSR, aimed at specific targets and social causes.

In Israel, as well as many other jurisdictions, CSR and Corporate philanthropy go unregulated, and are considered an elective practice, influenced largely by market considerations.

This workshop aims to map and discuss available models of collaborations and legal and regulatory approaches towards CSR that may serve as catalyst for business to target great outcomes for people and the planet too. Towards this end, the workshop will identify best practice examples and go behind the scene to explore available models of corporate-society collaborations from India, Israel and other countries and identify factors that lead to successful collaborations.

The workshop will promote mutual learning among all participants and is expected have a continuous conversation by further research, development and implementation on the following areas:

1. Best practices models for targeting and promoting communities' needs, through CSR
2. Developing programs for collaboration between corporations and CBOs and NGOs for effective application of CSR and MCSR
3. Research on possible correlations between corporate donations and other CSR practices (e.g., governance, reporting & ethics, responsibility for procurement chain conducts, workplace diversity, health and work-life balance in work-force, human rights etc.)
4. Research on impact of MCSR on scope and type of CSR spending

The workshop targets researchers and corporate executives responsible for MCSR execution to deliberate and discuss practices and impact of Corporate giving through CSR and MCSR in India and comparatively.



Workshop Program

9th February, 2019 (Saturday)

Time	Session	Speaker
10.00-11.00	Introductory session	Prof. Amita Dhanda, Center for Disability Studies, Center for Legal Philosophy and Justice Education, NALSAR Dr. Neha Pathakji, Asst.Prof., Center for Corporate and Tax Law, NALSAR Ms. Galia Feit, Executive Director, Institute for Law and Philanthropy, Tel Aviv University Mr. Gary Sussman, Knysna Advisory, Israel
11.00-11.30	Tea Break	
11.30-1.00	Legal and Regulatory Landscape of Mandatory CSR in India	Ms. Savita Singh, Partner, Khaitan & Co., Mr. Deepak Jodhani, Partner, Khaitan & Co. Prof. Padmini Srinivasan, IIM Bangalore Moderator: Mr. Sudhanshu Kumar, Asst. Prof., Center for Corporate and Tax Law, NALSAR
1.00-2.00	Lunch Break	
2.00-3.30	Mapping the CSR terrain in Israel	Ms. Galia Feit, Executive Director, Institute for Law and Philanthropy, Tel Aviv University Ms. Shirley Kantor, CSR Consultant, Israel Moderator: Prof. Neta Ziv, Tel Aviv University
3.30-4.00	Tea Break	
4.00-5.00	Peeping into CSR Practice: the Indian experience Part-I Foundations and Trusts	Mr. Vivek Prakash, Associate Vice President, Jubilant Bhartia Foundation Mr. Paresch Mohan, Sr.Manager, BIOCON Foundation Mr. Sameeraj Rao Ilapavuluri, Program Manager, Tata Trust Moderator: Mr. Alok Verma, Asst. Prof., Center for Corporate and Tax Law, NALSAR

10th February, 2019 (Sunday)

Time	Sessions	Speakers
10.00-11.30	Peeping into CSR Practice: the Indian experience Part II In-house CSR	Dr. Shama Zaidi, Sr. Manager, Aries Agro Mr. Prem Sagar Raju, Sr. Manager, Amara Raja Group Ms. Kumari M.S., Asst.Manger-Finance Ms. Nisha Sara Varghese, Deputy Manager-HR, Sundram Fasteners Ltd. Mr. Rohit Rao, CSR Head, Kotak Mahindra Group Capt. Kavita, Tata Advance Systems Moderator: Dr. Neha Pathakji, Asst. Prof., Center for Corporate and Tax Law, NALSAR
11.30-12.00	Tea Break	
12.00-1.00	Social Venture and CSR Connect	Mr. Ajit Rajnekar, Chair, Social Ventures Partners, Hyderabad Mr. S. Swaminathan, Project Director, Access Livelihoods Consulting India(ALC) Mr. Mahadev Tirunagari (Practitioner, Institute of Company Secretaries of India) Moderator: Ms. Galia Feit, Executive Director, Institute for Law and Philanthropy, Tel Aviv University
1.00-2.00	Lunch Break	
2.00-3.30	Sustainability and CSR – in consonance or dissonance?	Mr. Vikas Goswami, Head Sustainability-Good and Green, Godrej Industries Ltd. Dr. Ram Fishman, Faculty of Social Sciences, Tel Aviv University Mr. Sachin Joshi, CII-ITC Center of Excellence for Sustainable Development(web link) Moderator: Jateshwar Singh Sohi, Asst. Prof., NALSAR
3:30 to 4.00	Tea Break	
4.00 to 5.00	Joining the Dots: Setting the Agenda for Continuing Conversation	Facilitators Prof. Neta Ziv, Ms. Galia Feit, Dr. Neha Pathakji, Mr. Varun Malik – open session, identifying research questions

Executive Summary

"Fundamentally, we have a hard-wired cultural problem in business, finance and markets. Whereas CEOs, CFOs, and other corporate leaders move heaven and earth to ensure that they hit their profit targets, the same is very rarely true of their people and planet targets. Clearly, the Triple Bottom Line has failed to bury the single bottom line paradigm."

John Elkington, HBR, June 2018

In light of John Elkington's words, it seemed imperative to closely study CSR opportunities and critically question regulatory approaches towards CSR. India had recently adopted a Mandatory CSR (MCSR model) through its Companies Act 2013 which requires corporations satisfying specific size or profit thresholds to spend a minimum of 2% of their net profit on CSR, aimed at specific targets and social causes. In Israel, as well as many other jurisdictions, CSR and corporate philanthropy go unregulated, and are considered an elective practice, influenced largely by market considerations.

The two-day workshop comprised of seven sessions, which took place on February 9-10, 2019 at NALSAR University in Hyderabad, engaged some 35 presenters and participants including researchers and students, legal consultants, corporate executives responsible for MCSR execution and CSR consultants to deliberate and discuss practices and impact of corporate giving through philanthropy and MCSR in India and comparatively.

The introductory session set the framework and agenda, noting the concentration of wealth and power of corporations, their influence among states, and their status under international law. Although corporate responsibility can be perceived as a global common it is also necessarily rooted in local cultures, customs and histories. Therefore, while the 'why' of CSR continues to be debated, mandatory approach to CSR adopted in India requires also to look into the 'what' and 'how' of this new regulation. India's unique legal framework also offers an opportunity to explore connections between policy, theory and practice such as whether mandating CSR is perceived in theory and practice as a tax? Whether 'beyond compliance' is a relevant concept, and if the legal framework incentivizes better policy formulation and practice or sets a common minimum denominator of CSR?

The second session on the Legal and Regulatory Landscape of MCSR stressed that the underlying objective of mandatory CSR was to promote a culture of inclusive growth and thereby imbibe the principles of Sustainable Development Goals (SDGs) and the National Development Goals. This raised the inevitable question whether CSR is an attempt to delegate the functions of the state to a private entity. The session brought to light some gaps in regulation and also some positive trends in practice. For example: companies tend to spend more on CSR if they have a direct involvement in the activities; companies with close knit ownership structure spent more than the ones which were in business groups; CSR activities that addressed local areas saw greater spending when compared to non-local programs.

The third session presented the policy and regulatory framework for corporate philanthropy and corporate responsibility in Israel and its historical development, which was promoted by nonprofit organizations. The session also presented some exemplary practices built on collaborations between companies and nonprofit organizations.

The fourth session brought to light the practical experience of implementing CSR in India through Trusts and Foundations. It was suggested that CSR spending should lead to creation of infrastructure projects that lead to self-sustainability, that such positive impact may be better achieved if a network of community stakeholders is created and if implementation is preformed through a corporate owned foundation or trust to ensure better control over activities.

The fifth session explored CSR programs in India conducted in-house and their challenges. In the absence of reliable impact assessment criteria, it is difficult for CSR executives to provide concrete and verifiable proof of their claims to stakeholders and at the same time creates problems in convincing and negotiating with the internal management about the necessity of CSR spending and of areas of spending. Some measures for coping were suggested: Employee engagement showed better results regarding program ownership; NGO high engagement, including participation on board meetings, and also board member site visits create mutually beneficial outcomes.

The sixth session explored the connection between social venture and CSR, noting that while on the one hand, corporations are struggling to identify suitable projects for CSR funding, social ventures and NGOs struggle to find sustainable streams of funding. It is therefore crucial that social ventures and NGOs have equal access to capital and diversify their funding sources from government, corporations, trusts and foundations, and self-financing. Policy and regulatory amendments are needed.

The seventh session put the spotlight on connections between CSR and sustainability strategies. Corporation's role and responsibility comprise in ensuring social development of the country. This requires looking at the shared value, development priorities of the government and companies own manufacturing footprint while designing their CSR program.

The workshop concluded with the collective understanding of the importance of continued deliberations between CSR practitioners and academia to evolve CSR as a discipline, to develop multi-disciplinary research and praxis, to create a cadre of CSR professionals and support the development of impact assessment practices. It was suggested that NALSAR establish a research center funded by CSR to facilitate multi-disciplinary engagement and research.

Day 1

Session 1: Introductory Session

The workshop commenced with Prof. Amita Dhanda welcoming the participants.

The opening remarks of Prof. Dhanda, NALSAR buttressed the fact that with the concentration of power and wealth in corporation, there has been a significant shift from limiting corporate liability to enhancing their responsibility both at national and international level. The constitutional jurisprudence of India has recognized that Fundamental Rights guaranteed under the Constitution could be enforced only against the state, the interpretation of the term 'state' has been left open. Since modern day corporations have a transnational reach making them more pervasive and influential than the states themselves, international law also has witnessed a departure from a classical position when only state was considered as subjects of international law and progressively recognized corporations as significant actors. Consequently, it is critical to closely look at not only the way corporations are doing business but also how corporations impact the society, particularly when corporations hold state-like authority. It was therefore important to set up these conversations and have critical reflections thereon. Even as this workshop brings together experts from two nations, a transnational dimension to CSR was worth exploring.

Introducing the conceptual foundations of CSR, Dr. Neha Pathakji, NALSAR emphasized that CSR is kaleidoscopic and remains elusive in that CSR means something but not always the same thing to each one. While the 'why' of CSR continues to be debated, mandatory approach to CSR adopted in India requires to look into the 'what' and 'how' of CSR as well and pose the right set of questions – Do corporations across the globe necessarily have a CSR policy? What makes for a good CSR policy or good practice examples of CSR? But then, which policies and practices are 'good' and 'good' for whom? While it is conceded that theory shapes practice, it is also true that practice also inform theory. This workshop will be dwelling upon this mutual learning through dialogue and deliberation.

Setting the agenda for the workshop, Ms. Galia Feit, Institute for Law and Philanthropy elaborated that while there has been a global pressure mounting on corporations to address social and environmental impact, supporting theoretical framework and best practices with regards to the same have remained under-developed. Corporate responsibility can be thus perceived as a global common but the one necessarily rooted in local cultures, customs and histories. India's unique legal framework offers an opportunity to explore connections between policy, theory and practice. Even as the law obligates mandatory spending, it holds quite a lot of freedom regarding the choice of CSR activities. Some focal points for the discussion that may be suggested – whether mandating CSR as opposed to voluntary is perceived in theory and practice as a tax? Whether 'beyond compliance' a relevant corporate responsibility theme in India? Does existing legal framework incentivizes better policy formulation and practice or sets a common minimum denominator of CSR?

Mr. Gary Sussman, Knysna Advisory, iterated that discussion on the aforementioned issues require a robust and continuing dialogue and exchange between industry experts and lawyers and academia. The workshop with its diverse participants provides a platform for an engaging and insightful deliberation.

Session 2: Legal and Regulatory Landscape of Mandatory CSR in India

This session primarily aimed to analyze the legal and regulatory framework of the mandatory CSR in India. Whereas the legal side of the CSR regime was summarized by Mr. Deepak Jodhani and Ms. Savita Singh, Partners, Khaitan & Co., its experience in practice was captured by Prof. Padmini Srinivas, IIM Bangalore. The session was moderated by Mr. Sudhanshu Kumar, NALSAR and Mr. Sthithpragya Patnaik and Ms. Manasa Reddy were rapporteurs.

The presentations demystified the popular belief that India is amongst the first countries to mandate CSR with the revelation that Mauritius and Indonesia have already made the first move. India's initiative to shape some legal directive to corporation that were followed by the existing mandatory CSR was traced back to the National Voluntary Guidelines on Economic, Social and Environmental Responsibilities of Business 2009 by Ministry of Corporate Affairs and later revised in 2011. The underlying objective of mandatory CSR was to promote a culture of inclusive growth and thereby imbibe the principles of Sustainable Development Goals (SDGs) and the National Development Goals. The mandate of CSR spending comprised in section 135 of the Companies Act, 2013 together with Schedule VII of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014 was given a close reading. The scope and application of the expression 'every company' in section 135 extended to even foreign companies having operations in India as well as section 8 Companies. Reference was made to the circular dated 12.01.2016 issued by MCA. Schedule VII was merely indicative in nature and to be given a liberal reading so as to include even those activities that did not expressly fall within the categories indicated therein.

It was pointed out that the legislation prefers a 'comply or explain' mode of regulation. While failure to spend the requisite 2 percentage of profits on CSR does not attract any penalty, failure to report on CSR does have a penal provision. However, as a recent development, MCA has on pilot basis constituted Centralised Scrutiny and Prosecution Mechanism (CSPM) and issued notices to non-complying companies.

The exploration of the legal framework then shifted to obtaining insights into the trends in CSR spending as demonstrated through the data. Accordingly, CSR spending of 500 BSE companies was collated and a progressively declining trend of CSR spending was observed. However, companies that had spent the mandated profits tend to spend more on CSR if they have a direct involvement in those activities when compared to indirect involvement through outsourced activities and funding. The CSR spending also depended upon ownership structure of companies as well as area of spending. In that companies with close knit ownership structure spent more than the ones which were in business groups; CSR activities that addressed local areas saw greater spending when compared to non-local programme.

Points for Reflection

The discussions that ensued led to the following substantive and procedural issues and moot points:

- While the underlying purpose of mandating CSR was to allow and encourage corporation to use their business expertise to promote inclusive development of the society, possibilities of corporations attempting make last minute contributions to the specified donation fund in Schedule VII to demonstrate CSR compliance could not be ruled out. A concern therefore arises that if companies have not internalized CSR as a matter of practice, was mandating CSR a right approach? It is also crucial to inquire into the causes that lead companies to be evasive of CSR. It was highly probable that the non-compliance was not on account of lack of willingness to spend but due to lack of understanding on CSR and areas of CSR activities.
- If there exists such experiential and informational asymmetry about mandatory CSR, would the recently adopted deterrent approach in terms of show case notices be an appropriate strategy to seek compliance? The binaries of carrot and stick may not be a right approach and regulatory theories need be deployed.
- The rationale of Schedule VII was called into question particularly when donations made to certain specified funds of the Central Government were allowed but those to State Government were deleted.
- While the CSR Rules excludes activities undertaken in pursuance of the normal course of business of a company as CSR activity, it was mooted that when companies are allowed play to their strength area, it may prove to be impactful then when compelled to operate activities beyond their expertise. For instance, corporation can use its expertise and skill sets to add social value in the value creation process, so as to come up with a sustainable product.
- While there is no penal provision for non-compliance of CSR spending, director's breach of duty specified under section 166 of the Companies Act, 2013 attracts a fine. It is interesting to note that under section 166(2) of the Companies Act, 2013 director's duty include acting in the best interest of the company, its employees, shareholders and community and for the protection of environment. This duty can be safely interpreted as an extended concept of CSR. While no notices have been issued to the directors so far, possibility of the same in future cannot be negated.
- Since the scope and application of mandatory CSR extended to section 8 companies as well, it led to anomalous situation where a company incorporated with objectives of promoting inter alia education, social welfare, charity, protection of environment is also subjected to mandatory CSR.
- In the absence of CSR being subjected to Auditing, it was difficult to test the veracity of the claims by the companies – on the one hand, while on the other hand companies had issues in measuring the Impact Assessment of its CSR activities.
- Whilst a welfare state is required to provide public goods and services to her populace, can mandatory CSR be questioned as an attempt to delegate the functions of the state to private entity? A counter could be provided with examination of the modern day model of public-private partnership and the growing efficiency of corporations in social aspects of life as well.

Session 3: Mapping the CSR Terrain in Israel

This session provided insights into the conceptualization and practice of CSR in Israel. Prof. Neta Ziv, Tel Aviv University offered a normative framework to corporate involvement in society. Ms. Galia Feit, Executive Director, Institute for Law and Philanthropy chalked out various policy making authorities and grant making authorities in Israel thereby explaining the policy measures taken to promote sustainable corporate strategy and practice. This was followed by a presentation by Ms. Shirley Kantor, CSR Consultant that traced the evolving nature of CSR in Israel, highlighting the prevalent measure of indexation and some of the best practices. The session was moderated by Prof. Neta Ziv, Tel Aviv University and Mr. Sthithpragya Patnaik and Ms. Manasa Reddy were rapporteurs.

The session explored ideas of citizenship that include corporations as citizens having corresponding political authority and involvement at all stages of policy formation. Corporate governance can be seen as form of corporate citizenship. Corporate citizenship entails corporations to engage with the civil society not only to earn profits but also to take up its responsibility for the society. Even as corporations in Israel have practiced philanthropy throughout the years, corporate responsibility is different from corporate philanthropy. Consequently, CSR in Israel is always understood as beyond compliance.

Corporate social responsibility in Israel has evolved from traditional philanthropy till the year 1998 to strategic philanthropy in 2001 & 2003, to popularizing good management in 2005 and 2007 and realizing shared value system in 2011 and rooting CSR as contributing to inclusive growth in 2015. Thus, corporations in Israel have witnessed a shift from the basic approach of corporate philanthropy and community investment to integrated CSR approach.

CSR and Corporate philanthropy are not regulated in Israel, but are largely influenced by market considerations. However, Israeli companies are assessed on their CSR performance on Maala Index which includes parameters such as environment, health and work relation, inclusion and diversity, corporate governance, ethical procurement, social involvement of employee, community contribution and so on. Certain instances of good practice were shared that involved local authorities, community participation, employees contribution in CSR activities.

A brief idea was obtained on governmental authorities/departments such as Authority for Governmental Corporations, Israel Innovation Authority and Supervising Authority of Capital Markets, Insurance and Savings and their roles and functions in policy making, grant making and regulation was discussed. It was highlighted that whereas authorities encourage and promote corporations to adopt strategies that aim at solving social and environmental issues, however there is lack in regulatory demand for corporate responsibility and corporate philanthropy reporting.

Points for Reflection

The session engaged with the possibility of Israel adopting the mandatory CSR model in India. Since India has no uniform Impact Assessment measure for CSR activities undertaken by companies and

a draft CSR Index is currently under creation by the Bureau of Indian Standards, a national standards body in India, is a necessary function; learning from Maala Index of Israel and its transplantation in the Indian context could be examined.

Session 4: Peeping into CSR Practice: the Indian Experience – Part-I Foundations and Trusts

Having analyzed the legal aspects of CSR in India and alternative model of CSR in Israel, it was crucial that law and policy-making, as well procedures, are informed by ground realities and practical experience of implementation. Such exercise offers an appreciation of law from a regulatee's perspective. In keeping with the aforesaid scheme, the two sessions were drawn up to capture the diverse models and learning from them. First session dealt with experiences and outcomes when CSR activities were undertaken through Trusts and Foundations and the second session that followed on the next day engaged with in-house CSR department of companies that designed and implemented CSR activities.

The session comprised of insightful presentations from Mr. Vivek Prakash, Associate Vice President of Jubilant Foundation, Mr. Paresh Mohan, Senior Manager, Biocon Foundation and Mr Sameeraj Rao, Program Manager, Tata Trust. What emerged from the presentations were models of CSR activities and the larger vision behind those activities, the implementation techniques and approaches to CSR that companies have been adopting. The session was moderated by Mr. Alok Verma, NALSAR and Mr. Lesley Rajan and Mr. Sahil Ahmad were rapporteurs.

The Foundation Model of CSR activities. Several companies in India have been involved in CSR activities much before CSR became mandatory. One of the most common and convenient manner of undertaking CSR was through company specific foundations. The Foundation operates as a CSR arm of the company. Unlike outsourcing activities to an NGO or other trust/registered society, one of the primary advantages of a company owned foundation is that its goals and objective will be in alignment with company's own CSR policy. It thereby offers opportunity to channelize fund towards focused development, helps companies to ensure better control over the activities undertaken and reduce administrative costs involved in identifying and monitoring an external partner for CSR.

CSR Activities must lead to self-sustaining and continuing benefits. For instance, Jubilant Group of Companies have incorporated Jubilant Foundation since 2007 which is registered as section 8 company (erstwhile section 25). The model that was offered by Jubilant Foundation suggested that CSR must be scoped not from myopic lens of merely legal compliance but under a broad scheme of sustainable goals and value creation. CSR spending should lead to creation of infrastructure, projects, activities that leads to self-sustainability and continue to benefit the community even after the company has pulled out after having made the initial set up.

Involvement of community and in-house expertise in CSR activities. For instance, the Biocon Foundation identified environmental concerns in the immediate areas of Biocon offices and planned a clean-up operation. The project required them to co-ordinate with local municipal authorities and spreading the information about the intended program by putting up detailed sign boards in the

vicinity. The project required use of in-house scientific and technical expertise of the company as well as employee involvement in the project on voluntary basis. This model offered a perspective that subsequent maintenance and positive impact will continue when a network of stakeholders is created.

The Trust Model. TATA Trust holds majority shares of TATA group. TATA Trust offered the Grant making model. However, the Trust has moved from grant giving to implementation and work with affiliated organizations in specific regions, strengthening government programs and acting as knowledge partners for other organizations.

Points for Reflection

It was acknowledged that most family owned business in India have their own foundations. However, successful operation of the foundation requires clear mandates in terms of its scope and function for the corporation, in that whether the foundation is a CSR wing of the company or a funding organization. In case the foundation is merely a funding organization that identifies NGOs and other organizations and grants them funds for carrying out their activities, the concerns of reliability and experience of such agency, performance assessment of the agency, consequences for the company upon non-satisfactory performance of the agency, are matters that requires serious consideration. Often an apprehension is raised that since the company and the foundation are closely associated chances of financial irregularities between the two cannot be completely ruled out.

Day 2

Session 5: Peeping into CSR Practice: the Indian Experience **Part II In-house CSR**

This session focused on CSR activities undertaken by in-house CSR department. Dr. Shama Zaidi, Sr. Manager, Aries Agro; Ms. Nisha Sara Varghese, Deputy Manager-HR and Ms. Kumari M.S., Assistant Manager-Finance from Sundram Fasteners Ltd., Mr. Rohit Rao, CSR Head, Kotak Mahindra Group, Mr. Prem Sagar Raju, Sr. Manager, Amara Raja Group and Capt. Kavita, Tata Advance System shared their experience in the designing and implementation strategy, prioritizing areas of CSR activities and the envisioning that goes behind such program. Learning from the industry executives directly in-charge of the CSR program captured some of the unique points in the CSR policy, execution and challenges companies encounter. The session was moderated by Dr. Neha Pathakji, NALSAR and Mr. Sahil Ahmad and Mr. Lalit Sharma were rapporteurs.

Area of CSR activities: Certain areas in Schedule VII such as health, education, poverty alleviation and vocational skills are more popular in terms of CSR activities rather than the ones which are more aligned to the companies' core area of operation. For instance, Sundram Fasteners, Kotak Mahindra, Amara Raja, Tata Advance System as well as Aries Agro have addressed the aforementioned areas in their CSR programme, besides other specific areas of CSR spending. Companies have also been attempting to include sustainable development goals and ensuring long term, self-sustaining models of operation i.e. they are interested in ensuring that even after company has pulled out of the area, the benefits should continue to be reaped by the community.

Employee participation, management of companies building networks with NGOs. It has been experienced that when employees were roped into the company's CSR activities on voluntary basis, it yielded better results in that there was certain level of ownership of the program that was taken. While collaboration with NGOs in the execution of CSR activities aided in reaching out the communities, it also entailed constant monitoring and follow up on the NGO performance. However, employees and NGOs also proved to be alternative sources of receiving feedback and reporting to the management on the qualitative impact of the activity. Another model that could ensure the management taking a serious note of CSR is where a consistent exchange between the company management and partner NGO could lead to a mutually beneficial relation where presence of NGO representative in the Board Meeting and the Board members visiting NGO site can provide the Board with more concrete idea of the CSR work.

Points for Reflection

- *Need for Impact Assessment tool* – A common concern that emerged from each of the presentation was absence of Impact Assessment tool. Given the diversity of sectors of company's operation and a

range of CSR activities undertaken by them, no common Impact Assessment criteria were suggested in the legal framework. The same has been left to the regulatee and it would also involve costs. Absence of Impact Assessment renders the company in a dilemma whether the resources they are expending is making any dent in the existing situation.

- In the absence of reliable impact assessment criteria, it is difficult for the CSR executives to provide concrete and verifiable proof of their claims to the stakeholders and at the same time creates problems in convincing and negotiating with the internal management about the necessity of CSR spending and areas of spending.

Session 6: Social Venture and CSR Connect

Since the law allows outsourcing CSR activities to NGOs, registered society, section 8 companies, there is an intermediary who considerably possesses expertise in community service and its implementation. Social ventures are not accorded any legal identity as such and require incorporating themselves in the existing framework of trust, society or section 8 companies. This session aimed to explore the relationship between social ventures and corporations. While Mr. Ajit Ragnekar, Chair, Social Venture Partners, Hyderabad introduced challenges faced by social ventures owing to the disconnect between CSR and social venture; Mr. S. Swaminathan, Project Director, Access Livelihoods Consulting India (ALC) provided a social venture model at work. Mr. Mahadev Tirunagari, Company Secretary, Hyderabad brought forth some legal strategies that may encourage CSR initiatives. The session was moderated by Ms. Galia Feit, Institute for Law and Philanthropy and Mr. Sthithpragya Patnaik and Mr. Lesley Rajan were rapporteurs.

While screening outsourcing agency for CSR activities, corporations are required under the law to select agencies with an established track record of three years in undertaking similar projects. Consequently, new social venture despite having a promising project and enthusiasm stands disqualified. Finding a genuine social venture and differentiating it from the 'for profit' ones remains a challenge. Most CSR funding tends to be project focused and presumes that the agency has the required capacity. It is here that Social Venture Partners, Hyderabad offers a model of an intermediary that connects the company and the social venture or the NGO. It screens genuine social ventures, supports their capacity building and monitor performance.

Another model is offered by Access Livelihood Consultancy, a social enterprise in livelihood that partners with government, corporations, foundations, NGOs in the livelihood ecosystem. It's endeavors include giving access and scale to the collective enterprise which is a producer company, by partnering with MNCs, who agree to open their channels as a link to market.

It was suggested that soft measures such as creating CSR credits, akin to carbon credits, to all listed companies on the basis of their CSR activities on stock exchange, giving CSR ratings to companies could be mooted so as to incentivize them. However, it would be problematic in the sense that if CSR credits are similar to carbon credits, if CSR credits can be bought and sold by the non-compliers from the compliers, it may render CSR activities superficial.

Points for Reflection

- While on the one hand, corporations are found struggling to identify suitable projects for CSR funding, social ventures and NGOs struggle to find a sustainable project. It is therefore crucial that social ventures and NGOs have equal access to capital and diversify their funding sources from government, corporation, trusts, and foundations and self-financing, which signifies Universal Basic Capital as against Universal Basic Income.
- Insofar as corporations are concerned, they also often find it difficult to obtain data from NGOs. Consequently, corporations are unable to make a standard impact assessment of the project on which they invested. If the funding is discontinued with existing agency, it later adds up to their administrative cost of finding another NGO or innovating further for a new programme. While there are several NGOs operating in the country, chances of them being involved in unscrupulous activities cannot be negated and consequently, only the few consistent and popular NGOs are identified for funding purposes leading to excessive funding to such NGOs.

Session 7: Sustainability and CSR – in Consonance or Dissonance ?

The theme of this session emanates from seemingly different concepts – CSR and Sustainability that are at times conflated and used interchangeably in India. Ms. Vikas Goswami, Head Sustainability – Good and Green, Godrej Industries Ltd and Dr. Ram Fishman, Tel Aviv University respectively provided the industry approach to sustainability and academic and theoretical aspects of sustainability. Unfortunately, Mr. Sachin Joshi could not join the session owing to technical failures. The session was moderated by Mr. Jagteshwar Singh Sohi, NALSAR and Mr. Sahil Ahmad and Mr. Lalit Sharma were rapporteurs.

While in India CSR and Sustainability are understood as two different concepts, internationally they are taken as the same. It would be fallacious to consider that through CSR companies are 'giving back' to the society since such patronizing approach militates against the fact that companies draw resources offered by the society and stakeholders. Corporation role and responsibility also comprise in ensuring social development of the country. This requires looking at the shared value, development priorities of the government and companies own manufacturing footprint while designing the CSR programme. Concerns were flagged about corporate practices when CSR was conflated with social media marketing and thereby used as a tool for advertising for the company or the company engaged into fundraising exercise from consumer base which was then utilized for CSR activities. Further, when companies engage in vocational skill building activities as CSR activity and subsequently employ persons so skilled in their workforce, such activity tends to militate against the Apprentices Act, 1973.

It was suggested that CSR interventions and the impact of these interventions should go beyond where it is implemented. While India has resources, the problem is in not knowing what to do with those resources. This calls for coordination among corporation and institutional capacity building. Impact Assessment not only requires clarity on how to measure but also an understanding on what exactly to measure. This requires a multi-disciplinary approach in assessment.

Points for Reflection

- The legal mandate on CSR has somewhere ring fenced CSR field by virtue of Schedule VII as well as the 2% threshold.
- Dearth of CSR experts on CSR committee.
- Tax implications on corporation when grant under CSR is misapplied by agency and thereby recovered from such agency.

Session 8: Joining the Dots: Setting the Agenda for Continuing Conversation

This was a wrap up session for the two-day workshop that rounded off discussions held, issues flagged and future course of action for continuing the conversation. The session was facilitated by Prof. Neta Ziv, Tel Aviv University, Dr. Neha Pathakji, NALAR, Ms. Galia Feit, Institute for Law and Philanthropy and Mr. Varun Mallik, NALSAR.

- Measuring Impact Assessment of CSR activities of companies remained a major concern of the industry. The government has already clarified by virtue of its General Circular 1/2016 dated 12.1.2016 that it has no role to play in engaging external experts for monitoring efficacy of CSR expenditure of companies and that Boards/CSR Committees may engage third parties to have an impact assessment of its CSR programme to validate compliance of the CSR provisions of the law. It is now put at the door step of the corporation to either develop an Impact Assessment tool or engage a third party to do so.
- Impact Assessment must be undertaken not only for the society and corporations but also on how the same has impacted the functioning and efficiency of the government that has in a certain manner outsourced its welfare functions to corporation.
- There needs to be created reporting guidelines, data collection and analysis, develop questionnaire – 25 things to know about every CSR program.
- Before rounding up corporation for non-compliance, it is important to settle the substance of mandatory CSR and provide a normative and theoretical framework for the same. The goals/ outcomes expected of CSR activities need to be clarified before holding corporations accountable.
- Unless causes of non-compliance are unearthed, prescribing a carrot or stick approach of regulation may not yield desired results. Regulatory theories require to be invoked to fully appreciate the complexity of the area and understanding regulatee's behavior before being prescriptive.
- The CSR-Sustainability conundrum requires careful consideration in that whether CSR and sustainability should be collapsed together especially if sustainability is considered as a washed out concept. Further, should it be considered whether it is corporate 'social responsibility' or corporate 'social obligation' in that responsibility is something which is undertaken while obligation is something that one has.

- The legal mandate of CSR requires the application of CSR activities to preferably local area. Such localizing criteria limit the approachability of CSR since the stakeholder group may not be situated in the immediate vicinity but may transcend to markets beyond political boundaries.
- It is important that industry involve and engage with academia with respect to its CSR policy and practices since academia will be critical but fair in facilitating this kind of assessment. At the same time, it is an opportunity for academia to connect with industry and evolve CSR as a discipline, develop multi-disciplinary approaches to create a cadre of CSR professionals. An idea was proposed to establish a research centre funded by a conglomerate of companies situated in an academic institution like NALSAR which can be a facilitator for engaging multi-disciplinary subject experts.

Suggestions were received from the participants to make this workshop an annual exercise and further create a CSR community that could be a network of industry experts, members of academia from law, management, sociology, anthropology, economics; civil society and NGOs, social venture groups, researchers and scholars.

The workshop closed with a note of thanks to all participants and with a commitment to continue the conversation.



List of Participants

External Experts

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- 2 Ms. Savita Singh, Partner, Khaitan & Co.
- 3 Mr. Deepak Jodhani, Partner, Khaitan & Co.
- 4 Mr. Sachin Joshi, Head-Research, CII-ITC Center of Excellence for Sustainable Development, New Delhi (weblink)
- 5 Mr. S. Swaminathan, Project Director, Access Livelihoods Consulting India(ALC)
- 6 Mr. Ajit Rangnekar, Chair, Social Venture Partners, Hyderabad
- 7 Mr. Mahadev Tirunagari, Company Secretary, Hyderabad

International Delegation

- 8 Prof. Neta Ziv, Tel Aviv University
- 9 Ms. Galia Feit Adv., Executive Director, The Institute for Law and Philanthropy, Tel Aviv University
- 10 Ms. Shirley Kantor, CSR Consultant, Israel
- 11 Mr. Gary Sussman, Knysna Advisory, Israel
- 12 Dr. Ram Fishman, Faculty of Political Science, Tel Aviv University
- 13 Prof. Hadas Mamane Steindel, Faculty of Engineering, Tel Aviv University

In-house Experts

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- 15 Dr. Neha Pathakji, Assistant Prof, Center for Corporate & Tax Law, NALSAR
- 16 Mr. Sudhanshu Kumar, Assistant Prof, Center for Corporate & Tax Law, NALSAR
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- 19 Dr. Shama Zaidi, Sr. Manager, Aries Agro
- 20 Mr. Vivek Prakash, Associate Vice President, Jubilant Bhartia Foundation
- 21 Mr. Paresh Mohan, Manager – Healthcare, BIOCON Foundation
- 22 Mr. Prem Sagar Raju, Sr. Manager Amara Raja Group
- 23 Mr. Sameeraj Rao Ilapavuluri, Program Manager, Tata Trust
- 24 Mr. Vikas Goswami, Head Sustainability – Good and Green, Godrej Industries Ltd.
- 25 Ms. Kumari M.S., Assistant Manager-Finance and Ms. Nisha Sara Varghese, Deputy Manager-HR, Sundram Fasteners Ltd.
- 26 Mr. Rohit Rao, CSR Head, Kotak Mahindra Group
- 27 Capt. Kavita, Tata Advance Systems

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