

PHILANTHROPY

Legal news and updates for the social sector

January - March 2015



CENTRE FOR
ADVANCEMENT
OF PHILANTHROPY

CAP organised two events for its diverse stakeholders. Both events were possible thanks to grant support from the **Sir Dorabji Tata Trust**. On day one CAP hosted a **'Legal Leadership Dinner'** at the Sassy Spoon restaurant for the legal, grant-making and corporate fraternity.



Rati with Keynote speaker Prof Mark Sidel



Prof Mark Sidel spoke about the changing trends in CSR across South East Asia



CAP Board Member Archana Chandra with Noshir & Meher



Our panellists - Ingrid Srinath (HIVOS), Deval Sanghavi (DASRA) and Bahram Vakil (CAP Board & PARTNER AZB)



The panel was moderated by Noshir Dadrawala



Tina from CAP with Sawmya Lashkar Godrej (CSR) and Aloka Mazumbar HSBC (CSR)



Advocate Homa Petit, CAP Board Members Harsha Parekh & Rati Forbes with Rachna Rathi (Sudarshan Chemicals)



Ashok Advani of Bussiness India poses a question to the panel



Nawshir Mirza & Nishit Kumar from Childline



Audience



Guests Jehangir Patel & Firdaus Gandevia (Parsiana Magazine) & Advocate, senior counsel Navroz Seervai share a light moment



Friends from the sector with the CAP team - Unltd India, Guidestar India, Toolbox

CAP hosted a 'Think-Tank' session & lunch on the topic of “Self Governance” attended by its member NGOs. More than a one way speech, it was a free flowing conversation between all those present. We, the NGOs as always, love to speak and share - there was so much wisdom in the room and such rich exchanges that it was a delight to witness it. - **Abhishek Takore, Blue Ribbon Movement**. The morning began with the particiapant dance to the song, 'SWAY'!



CAP's efforts in Capacity building of the NGOs has also inbuilt in us to be styled as A LEARNING ORGANISATION and to understand that learning is an infinite process - it never ends. - Col. S. E. Modak (Veteran), Al-Hamd Hospitals & Medical Foundation & A. E. Kalsekar Educational & Welfare Trust.



Watching the film on CAP's journey only reaffirmed that (a surprise to Noshir from his charming team) and then we toasted to the next 28 years! Both events continue to inspire us on the wonderful work CAP is doing and remind us of our gratitude for. - Richa Roy, AZB Partners.



It was a good exchange of ideas and experiences. Let's hope we can draw something out of it going forward. All the best for the next 28 year! - Annabel Mehta, Apnalaya

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CENTRE FOR
ADVANCEMENT
OF PHILANTHROPY

Centre for Advancement of Philanthropy's quarterly newsletter, 'Philanthropy' serves as a vital communication and networking link, providing readers with relevant news, updates and views on legal and other issues in the social sector.

Philanthropy has a reader base of grant making foundations, voluntary organizations and other entities operating in the sector. It is also widely read by professionals like chartered accountants and lawyers as well as by those in the corporate sector.

The e-versions of these articles can be now found on our website in the newsblog section.

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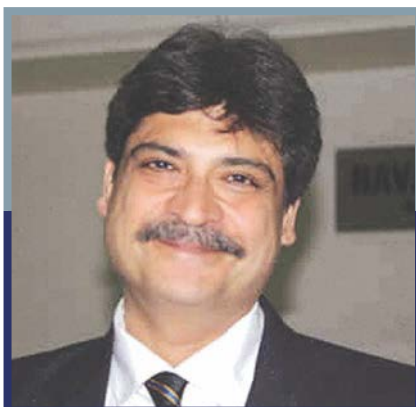
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Editorial



The year 2015 seems to have brought good tidings. The BNP Paribas 'Individual Philanthropy Index' reveals that Philanthropy is growing worldwide, increasing by 5 points on average in 2015.

On the CSR front, one still observes a lot of excitement and hope, but, the impact of mandating CSR in India will be known only a few months from now. In the meantime the Ministry of Corporate Affairs (MCA) has constituted a High Level Committee to suggest measures for improved monitoring of the implementation of CSR Policies by the companies coming under section 135.

MCA has also come out with a list of what it likes to call “sanitized” NGOs -- “free of any terrorist links or unwanted funds” that companies may choose to partner with for implementing their CSR policy. In our view this is a classic example of MCA adding 'insult to injury'. To begin with, is there any empirical evidence with the government of India that NGOs have terrorist links? Also, what is MHA's idea of “sanitizing” NGOs? It's quite simple: If there is no adverse report from the Income Tax department or the Intelligence Bureau then, BINGO – the NGO stands sanitized and worthy of becoming an implementing agency for a company.

If the year 2014 witnessed a lot of hype around CSR and mushrooming of consultants, this year is witnessing a lot of hype around renewal of FCRA registrations and the consequent mushrooming of consultants. Read more about it and our advisory in this newsmagazine.

In the meantime, a recent decision of the Allahabad High Court has also given the sector a reason to smile. The court has held that just because some activities undertaken by the institution were not solely for charitable purpose it cannot be made a ground for cancelling registration under section 12AA. Also, the Finance Act 2015 may not have brought cheer, but, it has provided some clarity on hitherto contentious issues. Read more in this newsletter.

Closer to home, the charity commissioner's office is starting to finally get tech savvy. It may soon start with online registration and online filing of returns. To sum up, there will always be challenges, but, the year 2015 does seem promising. So smile and step up!!!

Noshir Dadrawala
CEO, Centre for Advancement of Philanthropy.



NOTE TO ALL CAP MEMBERS & AFFILIATES

As we come to the end of yet another year, we grow as a team and our services expand. To assist you more efficiently and to ensure you receive speedy responses, kindly direct your mails to the following.

advisory@capindia.in – **Noshir Dadrawala** – For all legal/CSR queries

tina@capindia.in – **Tina Vajpeyi** – For any queries related to Finance/Fundraising

meher@capindia.in – **Meher** – for any capacity building workshop/consultancy operations queries

admin@capindia.in – **Martina Fernandes** for appointments/fees/payments

connect@capindia.in – for general queries, non-members, membership detail etc.

Income Tax News - What Has Changed for NPOS Post Finance Bill 2015?

Earlier: Institutions engaged in advancing yoga fell under the category “advancement of any other object of general public utility”

Now: Yoga has been elevated to the category of “education”

Effect: Institutions engaged in advancing yoga need not worry about their “business income”



Earlier: Institutions established for “charitable purpose” falling under the category “advancement of any other object of general public utility” were under threat of losing their tax exemption if income from “Business activity” exceeded Rs. 25 Lakhs during the financial year.

Now: This provision has been made tighter with the requirement that any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of the income from such activity must meet the following criteria:

(i) Such activity must be undertaken in the course of actual carrying out of such advancement of any other object of general public utility and

(ii) The aggregate receipts from such activity or activities during the previous year do not exceed twenty per cent of the total receipts of the trust or institution under such activity or activities of that previous year.

Effect:

(i) The business or commercial activity must be undertaken in the course of actual carrying out of such advancement of any other object of general public utility. The fact that a business or commercial activity may have been undertaken to ultimately apply such income for charitable purpose would carry no weight.

(ii) The larger the total receipts from donations, interest and dividend etc., proportionately the more receipts from business or commercial activity would be allowed. In other words, if the total income of the NPO is five crore rupees then receipts from business or commercial activity would be allowed up to one crore rupees.

(iii) Conversely, if the total receipts of the NPO during the previous financial year (from donations, interest,

rent etc.) amounts to Rs. 50,00,000 then, it cannot have business income in excess of Rs. 10,00,000/-. In other words, it's good news for big NPOs and bad news for smaller NPOs.

(iv) Ideally the amendment should have been, “The aggregate receipts from such activity or activities during the previous year do not exceed twenty per cent of the total receipts of the trust or institution under such activity or activities of that previous year or Rs. 25 Lakhs, whichever is higher.”

Earlier: NPOs which could not spend at least 85% of their total income during any financial year had the option to provide intimation to spend the unspent income over the next 12 months or accumulate income for a period of 5 years by filing Form No. 10. There are various judicial decisions supporting the view that Form No. 10 could be filed at any time before the completion of assessment.

Now: Form No. 10 must be submitted before the due date (30th September) of filing the return of income as specified u/s 139(1).

Effect: Intimation to spend the unspent income over the next 12 months or accumulate income for a period of 5 years by filing Form No. 10 must be done with six months of the close of the financial year and not assessment year.

Earlier: Rate of Service Tax 12.36%.

Now: 14% subsuming education cess and higher education cesses in the said rate

Effect: The new rate will come into effect from a date to be notified

From The Legal Hub

FCRA Update - NGOs Advised NOT to PANIC over FCRA Renewal Process!

By: Noshir Dadrawala

The NPO sector in India is in a state of panic with regard to FCRA. What are the next steps?

Almost every month or the other we get to read news about the Ministry of Home Affairs (MHA) cancelling registrations en mass. Certain NGOs have been placed under a special scanner. Why is this happening? Is there an explanation?

Here is our take:

- The Government of India and especially the MHA has always had a 'love to hate' relationship with the voluntary sector.
- Besides considering them as unprofessional and easy tools in the hands of foreign agencies, the government views civil society organisations as money laundering agencies', 'agents promoting religious conversions', 'agents for terror and naxal funding', 'trouble makers', 'anti establishment' and 'anti-development'. That's quite a dirty laundry list!

But, is this the only reason why the MHA is issuing cancellation orders? We think not. To some extent, the fault also lies with the NPO sector for being lax in complying with what is required under law.

Through a recent "Cancellation Order" of March 3, 2015 the MHA at one single stroke has cancelled the FCRA registration of 1,142 organisations in just one specific state – Andhra Pradesh and the reason being failure to file Annual Returns from the year 2009 to 2012.

Prominent organisations such as the University of Hyderabad, Andhra University and Osmania University have been included in the "Cancellation Order".

What seems to have been the rationale behind this? According to the "Order", MHA seems to have sent notices to 1,441 organisations in the state of AP and received responses from just 299! These 229 organisations are currently under review. However, for the remaining, where no response was received, including the 510 organisations whose notices were returned to the MHA undelivered, their registration stands cancelled!!!

Soon MHA will strike other states. Is this an act of vendetta or simply a random and erratic "clean-up" exercise on MHA's part? It's clearly the latter.



The MHA's FCRA department at the moment is:

1. Understaffed, inexperienced in handling FCRA related matters, disinterested and demotivated.
2. It has been compiling data electronically only since the last few years.
3. Having moved offices at least 3 time considerable data in hard copy has been lost.

There are NPOs registered since the 70s and the 80s and arguably more than 50% of the NPOs registered under FCRA no longer exist or no longer need foreign funds and are registered in name only. However, the manner in which the MHA is cancelling registrations defies all logic and principles of natural justice. The methodology is arbitrary and random.

MHA argues that when letters and notices are sent to the NPOs they return undelivered because the address is changed. However, is this a valid reason for cancellation? Does MHA have a proper system of recording change of address?

NPOs claim that they send their change of address to the MHA and we know for a fact that at times MHA does not even bother to open envelopes and if it does, it simply files letters away without noting the change. All said and done, MHA needs to be told that it must put its act together and with understanding and sensitivity.



FCRA Renewal

In the meantime, all FCRA registrations granted before 1st May 2011 (the date from which the new FCRA 2010 came into force, replacing the earlier Act

of 1976) will automatically expire on 30th April 2016, unless renewed by the NGO by due process.

Under the new FCRA 2010 'Registration' is granted for a period of five years. Thus, all registrations granted under FCRA, 1976 shall remain valid for a period of 5 years from the date FCRA 2010 came into force, i.e., 1st May, 2011 up to the 30th April, 2016.

As usual a number of 'consultants' and 'consulting agencies' have sprung up to assist NGOs in renewing their registration. Most of them are 'fly by night' operators with little sense or understanding of the law. Many of these agencies have hastily made NGOs apply in Form FC 5 by post. This has been a hasty and premature step. **One needs to wait till form FC 5 goes online.**

In the meantime, this would be our advisory:

- 1) Do not entertain nor take seriously the 'consultants' and 'consulting agencies' that have come out of the woodwork to feed on your doubts, insecurities and anxiety;
- 2) Starting March 2015, credible organisations like FMSF, CAP, CPA and VANI will jointly conduct FCRA clinics and workshops all across India to guide NGOs in this regard. **All workshop dates are on back cover page.**
- 3) Do not panic. Stay calm. There is still time and you are more likely to lose your registration by making undue haste;
- 4) Your Association should apply for renewal in Form FC-5 (which will be available online shortly) six months before the date of expiry of the certificate of registration.
- 5) If your association has been granted FCRA registration prior to 1st May 2011 and carries no date of expiry, i.e. registration was granted to your Associations under the repealed FCRA, 1976 it will be valid up to 30th April, 2016, such Associations should apply for renewal of their registration on or before 1st November, 2015.
- 6) An Association granted registration under FCRA, 2010, i.e., after 1st May 2011, would have to apply for renewal of registration six months before the date of expiry of the validity of its certificate of registration.
- 7) Associations implementing an on-going Multi-year project should apply for renewal twelve months before the date of expiry of the certificate of registration. The term, "on-going Multi-year project" has not been defined under the Act or the Rules. Hence, even if such organisations apply six months before the date of expiry of the validity of its certificate of registration, it cannot be considered a violation.
- 8) The application made for renewal of the certificate of registration should be accompanied

by a fee of INR 500/- (Five Hundred only).

- 9) The fee for renewal of the certificate of registration can be remitted by demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.
- 10) In case no application for renewal of registration is filed or such application is not accompanied by the requisite fee, the validity of the certificate of registration shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration.



Along with Form FC-5 the following documents will have to be provided:

- Details of the names and addresses of the members of the executive committee/governing council.
- The nature of activity.
- Details of the existing registration and PAN.
- Details of the foreign contribution received during all the years since its registration with yearly break up.
- Details of utilisation of funds.
- Declaration that all the provisions of FCRA 2010 were complied.
- Reasons for seeking renewal.
- Details of information, if any, regarding the organisation if it had been blacklisted/debarred from receiving any aid and/or assistance by any other Ministry/Department of Central and/or State Government or any Statutory Authority.
- A copy of the registration certificate.

We would once again request NGOs to exercise caution and not get carried away by agents and fly-by-night operators who will promise "getting you FCRA renewal". Thanks to online systems and processes, human interface has been minimized and discouraged.

To conclude on a positive and reassuring note, NGOs that have been filing online returns over the last 3 to 5 years and against whom there have been no inquiries or adverse reports are likely to get their certificates renewed without much difficulty.

There are over 40,000 NGOs registered under FCRA and MHA is of the view that almost 50% of these NGOs are now defunct or extinct. This 'renewal' process is in a sense a 'clean-up' process by the MHA.

Noshir Dadrawala, is one of India's leading legal expert on advisory for charity organisations in areas of Trust Law, Income-tax, FCRA, Labour Law, service Tax & VAT. To know more about our service offerings contact our office.

Overseas Outlook

Transparency, Accountability, and the Expansion of Nonprofit Self-Regulation: Developments in the U.S.

By: Mark Sidel

Doyle-Bascom Professor of Law and Public Affairs, University of Wisconsin-Madison
Consultant (Asia), International Center for Not-for-Profit Law (ICNL)

Nonprofit accountability and self-regulation in the United States has a long history, especially with the self-regulation of specific nonprofit sub-sectors such as hospitals, higher education, museums, land trusts, legal education, and other areas. In those and many other fields, self-regulation is an important part of standard-setting, quality assurance, capacity building and education, and transparency in the American nonprofit sector.

In recent years, important milestones in American nonprofit self-regulation have included the Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations (2007), which were adopted after some in the U.S. Congress threatened stricter regulation of the American sector, and which focus on legal compliance, public disclosure, effective governance, strong financial oversight, and responsible fundraising. Within philanthropy, the National Standards for Community Foundations are leading the way on standards and self-regulation in the foundation sector (and I should note that I sit on the National Standards Board).

With nonprofit self-regulation now spreading around the world – but of course never taking over the primary role that direct government regulation plays in controlling, channeling and molding the nonprofit sector – a number of issues and problems arise in self-regulation for transparency and accountability.

They include:

- What are the key goals of nonprofit sectoral self regulation? Enforcement? Improving standards? Capacity building?
- Is self-regulation becoming a problem in some places – for example, when there are multiple self-regulatory code, standard, rankings, certification and perhaps other burdens on nonprofits? And are those potential burdens higher, as might be expected, on local, advocacy and/or grassroots organizations?
- Do the requirements of self-regulatory standards, even if voluntary or “soft,” discourage diversity and innovation in approach, in participation, in advocacy, in goals?
- Are we seeing the emergence of “self-regulatory entrepreneurs” that are using self-regulatory systems and membership to grow their organizations? If that is occurring, is it a problem?
- Is nonprofit self-regulation being used as standard-maintenance and quality maintenance tool, or is it being used as a market mechanism for excluding “unproductive” or “inefficient” actors for the benefit of remaining “players” in nonprofit activities?

As the discussion at the Mumbai event clearly showed, there is significant interest in aspects of nonprofit self-regulation in India. While we explore the advantages of self-regulation, as mentioned at the beginning of this short commentary, we should also bear in mind some of the potential disadvantages, as identified directly above. But the spread of nonprofit self-regulation around the world shows that it is here to stay, and bears close watching and close discussion, in India and beyond, in the years ahead.

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Finance Facts

What Financials Should be Discussed at a Non-Profit Board Meeting

By: Tina Vajpeyi

Recently CAP held a think tank for finance staff of non-profits, which raised a number of queries related to Board involvement and decisions. The finance management and accounting staff are given the responsibility to ensure that all financial transactions are properly carried out and recorded but what is sometimes missed in the definition of duties is that ultimately the Board of Trustees or the Governing Board are liable for financial or other liabilities that may arise due to errors or omissions of information. It is therefore very important to have a clear line of communication and reporting between the Board and the financial manager to catch any problems if, when, and preferably before they arise. In my experience there are many organizations who have suitably qualified staff and Board members or at least a financial advisory body but many do not. It is therefore important to keep updating oneself on various legal and financial compliance requirements of a trust or society. This should be done even if one is relying on an outside accounting firm or professional audit firm.

There is always room to improve accounting and budgeting systems in order to collate more effective and useful financial information. Whilst it may seem obvious that the organization discusses its finances and other accounts related matters at each Board meeting, I have found that this is not always the case. A few simple things that the senior most person in charge of the accounting/financial reporting can do is to ensure that they plan ahead for the Board meetings and put together a template or list of items that they would send to the Board or finance advisory committee for discussion. A little bit of planning can go a long way in ensuring efficient functioning and some of the items to think about are outlined as follows:-

Firstly, draw up tentative dates to fix your Board meetings, at least 4 in a year unless your MOU states otherwise, and in each of those set down the finance items to be discussed. Planning ahead for dates should help to ensure that sufficient quorum of Board members attend the meetings? If the entire Board doesn't have time to go through a review there should be at least one member on the Board who can sit separately with the finance team to do so prior to the meeting they can be part of a finance committee that has voluntary advisory members.



“I’d like to begin by making the same point about twenty times in a row.”

At each meeting give a review of large grants and donations received and highlight the names of any large donors to ensure that they are specifically acknowledged and thanked by Board members. A review of budgeted against actual expenditure can be done in brief as well as the cash flow status of the organization. This assists in anticipating any shortfalls or areas of concern such as over-expenditure on certain expense heads. There may be requirement to draw up resolutions to withdraw corpus or fixed deposit funds or make new investments for which the Board would have to make a resolution authorizing the same. At Board meetings all resolutions for changes of bank signatories, investment signatories, any authorization signatories for leases and grants and other official documents would need to be authorized and documented and hence prior to Board meetings these should be prepared and kept for signature as well as recording the changes and approval in the Board meeting minutes.

Towards the meeting for the first quarter around end of June or beginning of July the draft accounts for the year should be prepared if not earlier and a full review of the income and expenditure that was budgeted can be presented to the Board. At this time any corpus letters which may be outstanding can be informed to the Board since large donations may have come through their personal contacts and they would hence need to follow up on them.

Finance Facts

A Board is required to sign off on audited accounts and the income tax returns as well as FCRA accounts. Similarly, in Maharashtra the budget of the organization needs to be submitted to the Charity commissioner's office and hence given the requirements for various documents and resolutions the annual Board meeting plan can highlight such deadlines. It is not unusual to find that at crucial times, Board members may be travelling and hence not available to sign off on various documents and this needs to be preempted.

Board members apprising themselves of their statutory requirements and liability would not absolve finance staff of their responsibilities to do their work accurately and in a timely manner. It does help however to run a more efficient and transparent organization which can avoid problems with financial reporting, income tax, TDS, FCRA and other statutory areas. A little time spent in planning and discussion can save a lot of time in future.

CAP's Finance Consultant Tina Vajpeyi offers Finance & Accounting advisory to organisations in areas of Financial Control, Accounting Systems, Budgeting etc. To know how you can avail our Finance Advisory - connect@capindia.in



5 Ways To Perk Up Your Board Meetings

By: Meher Gandevia-Billimoria

Finding board members that will exercise the best mix of responsible oversight and appropriate level of control is one part of the exercise. However what is perhaps sometimes a greater difficulty, is keeping them involved. **If your board members are not showing up or not engaged enough at your board meetings here are some points to consider to perk up your board meetings.**

1 Prior to the meeting, **provide information ahead of time** that will help board members think about issues that will be discussed at the meeting. You could also follow this up by designing a session within the board meeting that **encourages dialogue about an issue, not decision making**. It would also help to break the board into small groups for a discussion.

2 **Routine items could be bundled** into a single consent agenda for issues that need board approval but not board discussion so they can be dispensed with quickly and easily.

3 At some meetings, you could **invite a guest facilitator** for discussion of issues. This will free the board chair and the CEO so they cannot so easily nudge the discussion in any one direction. The facilitator should be adept at using methods such as brainstorming.

4 **Framing the context of an issue** by explaining a possible strategy, or identifying the questions the board should address. Often one can invite a guest speaker to share their experiences/expertise if their issue has some learning for the one your organisation is facing. Ex. During the planning of a fundraiser, you may want to invite someone who has already managed his or hers successfully.

5 There is nothing an informal setting to loosen things up. Board Meetings could be followed by lunch or high-tea with the staff, giving both an opportunity to interact in an informal setting. Alternately **Plan an annual retreat** away from the usual meeting site. It takes away the time constraint that board members usually face of rushing to 'the next meeting'.

From The Legal Hub

Legal Aspects of Good Board Governance

By: Noshir Dadrawala

The term “trustee” is a compendious one. It covers a large number of relationships involving different obligations and it may be said that every man is a trustee to whom is entrusted the duty to manage and control the property of others, even though the ownership of the property is not transferred to him. Here are a few legal aspects of good Board Governance to help trustees understand their role and responsibility and get insights into some of the legal fundamentals of 'trusteeship'.

Knowing the Organization

One of the first duties of a trustee is to acquaint himself/herself, as soon as possible, with the nature and, particularly, with the aims and objects of the trust. He/she should make a thorough study of the



trust deed or the memorandum and articles of association, as the case may be. A trustee must know what the instrument of trust requires him to do. He/she has to carry out scrupulously the terms of the trust. If he/she fails or neglects to carry out these terms, he/she commits a breach of trust. Trustees often believe that a breach of trust is committed only if they misappropriate trust property. This is not so. Not giving effect to the aims and objects of the trust and indulging in other activities, howsoever charitable in nature or of profit to the trust, also constitutes breach of trust. It is a well-established fact that where the intention of the founders can be given effect to, no trustee or even a court of law has the authority to sanction a change from the intention expressed by the settlor/s on the grounds of expediency, and the court cannot exercise the power of applying the trust property, or its income, to other purposes, simply

because it considers them to be more expedient, or more beneficial, than what the settlor had directed.

No Personal Interest

In Halsburg's 'Laws of England' (2nd edition, vol. 33, pg. 220) it is observed, “A trustee must not, in any way, make use of the trust property or of his position as trustee for his own interest or private advantage, nor may he enter into engagements in which he has or can have a personal interest which conflicts, or possibly may conflict, with the interest of those whom he is bound to protect.”

The Madras High Court in *S. Veerraghavachariar Achariar vs. V. Parthasarathy Iyengar* (AIR 1925 Mad. 1470) has observed:

“It is highly regrettable that trusteeship of temple and similar institutions should be looked upon as places of prestige and profit and that people should be found who are desperately anxious to be elected to such places or to continue to stick to them in spite of the onerous and serious responsibilities thereof. The true spirit in which such offices should be accepted or retained is the spirit of service and sacrifice in the interest of the public and of the institutions. So long as such offices are regarded not as posts of duty and responsibility but as opportunities of personal aggrandizement, the affairs of such institutions are bound to be unsatisfactory. Once a person accepts an office of trusteeship, the one governing consideration in his mind, the ruling motive for all action, the one principle by reference to which all his acts should be determined, is the interest of the institution and that alone; and in our judgement, persons who though holding a fiduciary position allow their actions to be prompted by any other considerations, motives or principles are as much guilty of misappropriating property belonging to the trust.”

Joint Responsibility

It is not unusual to find one trustee from a board of many being referred to as a “managing trustee”, meaning a trustee who actively entrusts himself in the trust affairs and whose decisions are merely endorsed by the co-trustees. In law, however, there is no concept of a “managing trustee”. Trustees on the board of any trust are “jointly and severally responsible”. This principle is well summarized in Underhill's 'Law of Trusts and Trustees'

From The Legal Hub

“Each trustee is, in general, liable for the whole loss when caused by the joint default of all the trustees even though all may not have been equally blameworthy and a decree against all may be enforced as against one or more only.”

It is an accepted principle that a trustee of a religious or charitable trust should take proper care of the trust property just as a man of ordinary prudence does, in respect of his personal property.

No matter how the organisation is structured or the degree of authority delegated to staff or committees, it is ultimately the trustees who are accountable and responsible.

Delegation Of Duty

In principle, a trustee cannot delegate any of his duties, functions and powers to a co-trustee, or any other person, unless the instrument of trust so provides or the delegation is necessary or the delegation is in the regular course of business. However, appointing an attorney/proxy to carry out functions that are merely ministerial is not considered delegation of duty.

As a general rule, executive acts may be delegated, but where a trustee has to exercise a discretion, he must exercise the discretion personally and cannot delegate it.

A Trustee Cannot Buy Trust Property

In principle, a trustee cannot buy the property of the trust himself, and he cannot sell any of his properties to the trust either – the mischief in both the cases being the likelihood of a conflict between his interest and his duties as a trustee. The law does not go into the question whether the transaction is beneficial or not.

Section 52 of the Indian Trusts Act, 1882, provides, “No trustee whose duty is to sell trust property and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.”

This provision incorporates the general principle that where any one is in a fiduciary position, he cannot derive advantage to himself from his position.

According to the provisions of section 13 of the Income Tax Act, if any part of the income or property of the trust is used directly or indirectly for the benefit

of any person referred to in sub-section (3) of section 13, the trust would stand to lose its exemption u/s 11 of the Act.

Remunerating A Trustee

It is a general rule of equity that a trustee should administer the trust gratuitously, and this rule applies even though the completion of his undertaking involves considerable loss of time and much personal inconvenience.

Even a solicitor-trustee is not entitled to charge for non-contentious business, except costs out of pocket.

Voluntary service is the foundation underlying all trusteeship and the law precludes a trustee from making a profit or acquiring a benefit from his office as trustee.

In case a trustee desires to be remunerated for contribution of his/her time, energy, experience and skill, it would be advisable for him/her to first resign as a trustee and, if the remaining trustees so desire, he may be appointed to the post of a director or chief executive or executive secretary and receive a regular salary or honorarium, with or without other allowances and benefits.

The law in India, however, does allow 'reasonable' remuneration to be paid to a trustee. However, from a point of view of good governance, this poses 'conflict of interest'.

Administrative Care and Supervision

- Trustees should regularly check the books of account, particularly, the bank and cash books, ledgers, petty cash books, receipt books, voucher files and other registers of record, etc.
- Separate books of account should be maintained if the trust has any business income or receives foreign aid.
- Vouchers must be maintained for every single expenditure and receipts should be issued for income like donations, rent, sale of products, etc.
- Bank reconciliation statements should be drawn up every month, if possible, to check errors.
- Investment of trust funds should be in accordance with section 35 of the Bombay Public Trusts Act, read with section 11(5) of the Income Tax Act.
- Loans and advances raised by the trust should have the approval of the charity commissioner (u/s 36A(3) of the Bombay Public Trusts Act) and no

From The Legal Hub

- trustee should take loans for himself, from the trust property.
- If the trust operates in more than one region with regular branch offices, the accounts of all such branches should either be consolidated, or separate accounts should be maintained.
 - All major policy decisions should be supported by resolutions passed by circulars or at board meetings.
 - Minutes book should be maintained and trustees should meet as often as required, or as directed in the trust deed.
 - In case of a difference of opinion on a policy matter, the majority view may prevail. The dissenting trustees may record their dissent.
 - Good work being carried out by an organization is no excuse for default in submission of accounts or meeting various other requirements under the Trust and Income Tax Act.
 - A trustee is generally protected from liability for errors of judgment, as long as he/she acts responsibly

- and in good faith and with the basic interest of the trust as the foremost objective.
- Administrative costs should be kept within reasonable limits.
 - If the organization is a welfare body and wishes to promote its image, it should not indulge in unethical publicity and promotion. In particular, it should not lend itself to exaggerated or misleading claims.

Nancy Axelrod in 'A Guide for New Trustees' states: "An ideal trustee is a man or woman with the versatility of Leonardo da Vinci, the financial acumen of Bernard Baruch and the scholarly bent of Erasmus."

The ideal is often difficult, almost impossible, to achieve. One can, however, aspire. As the late Mr. J.R.D. Tata used to say, "If you aspire for perfection, you will achieve excellence. If you merely aspire for excellence, you will achieve neither."

Noshir Dadrawala, is one of India's leading legal expert on advisory for charity organisations in areas of Trust Law, Income-tax, FCRA, Labour Law, service Tax & VAT. To know more about our service offerings contact our office.



India Is A Free Country And Now So Is The Internet And Its Users In India

On 24th March 2015 the Supreme Court of India in a landmark judgement has struck down the draconian Section 66A of the Information Technology (IT) Act, upholding citizen's fundamental right to freedom of speech and expression. The court struck down this section holding it in violation of Article 19(1)a of the Constitution, which guarantees freedom of speech.

Section 66A of the IT Act has often been misused by politicians, political parties and their followers to gag critics and violate human rights through the abuse of the draconian power to arrest and jail those who speak their minds, especially on social media.

The case was filed by a social media company '**Mouthshut.com**' and was clubbed along with a petition filed by **Ms. Shreya Singhal**, a law student, challenging section 66A.

Hitherto, section 66A provided the power to arrest a person for sending grossly offensive or menacing messages, or causing annoyance and inconvenience through electronic communication service. It prescribes a three-year jail term, if found guilty. The language of this Section has been copiously misinterpreted in the past to harass and intimidate citizens by arresting them. The writ petition filed by 'MouthShut.com' was under Article 32 of the Constitution

for quashing the IT Intermediaries Guidelines Rules, 2011 claiming they were in violation of Articles 14, 19 and 21 of the Constitution of India. The examples of misuse of Section 66A by politicians are many. In 2012, two young girls were arrested and terrorised by a mob for a harmless Facebook post criticising the shutdown of Mumbai for the funeral of Shiv Sena supremo Balasaheb Thackeray. One of them had merely 'liked' the post.

The two girls were first booked under Indian Penal Code (IPC) sections 295A (hurting religious sentiments). When it was realised the Shiv Sena is not a religious group the girls section 295A was dropped and section 505(2) (promoting enmity or ill-will between classes) and section 66A were applied. Karti Chidambaram, son of former Union minister P Chidambaram, had a Puducherry businessman arrested at night for some posts on Twitter. This case, too, had triggered outrage on social media. Section 66A has even been applied with other provisions of the Indian Penal Code for cases involving cyber-squatting and impersonation.

What is the overall impact of this landmark judgement?

1. India is a free country and now so is the internet and its users in India.
2. Content on Internet cannot be taken off without a court order
3. There will no longer be threats of arrest for posting content on the internet.

CSR in India – Challenge or Opportunity?

By: Noshir Dadrawala



By the time readers read this newsmagazine a full year will be completed since the new Indian Companies Act has come into force. How has the scenario changed?

CSR has been made mandatory under law, but NPOs who were expecting a bumper crop of funds have not been able to harvest even a bushel. Why is that so? Perhaps these could be some of the reasons:

- 1) The old private sector companies like Tata, Godrej, Mahindra, Birla have anyway been involved in CSR since decades through their trusts and foundations.
- 2) Out of the 16,000 companies hit by the mandatory CSR clause (Section 135 of the Indian Companies Act 2013), the vast majority have funds between Rs. 10 Lakhs to Rs 50 Lakhs only. Unless pooled in an effective manner, these funds get frittered away in a manner that is neither appropriate nor impactful.
- 3) The bulk of funds lie with Public Sector Undertakings (PSUs) and they generally have semi-government systems, processes and paper work that many NPOs are not quite comfortable with.
- 4) Several NPOs, especially the smaller ones, are still looking for 'donations'. They are still unable to grasp the fact that companies are mandated under law to implement CSR in programs or project mode only with clear 'needs statements', 'goals', 'objectives', 'output' and 'outcome'.
- 5) A few companies are adopting the easier route of making corpus grants to their own foundations or

giving it to the Prime Minister's National Relief Fund. Over the next couple of months, we will know how exactly, 'Corporate India' has performed in the CSR space.

In the meantime, companies in India have not yet understood the real value or benefit that accrues from being CSR compliant, with or without the law mandating it.

- The general population has become increasingly aware of social and environmental issues, which by no coincidence, concurs with numerous NGOs around the world popping up to show corporations and individuals the ethical way.
- Businesses, both big and small, are more responsible for their impact than ever before, largely due to the internet, which facilitates the fast assimilation of information and unites the voices of those who previously stood alone in their respective battles for good.
- At least in the West, Companies are recognising that consumers are not interested in buying 'responsible' products from companies that are not known for being 'responsible' themselves.

Enhanced engagement

- Implementing robust, well thought out CSR policies can go a long way in promoting both customer and employee engagement.
- Incorporating CSR in a business model acts as a mechanism to reach out to the public in new ways -- ways that get people talking, sharing and ultimately consuming more.
- Projecting the image of ethical practices, such as sustainable sourcing, fair treatment of employees and being 'caring & sharing', can focus the public's spotlight onto these praiseworthy policies, and so onto the firm from which they come.

Unfortunately, neither Section 135 nor the CSR Rules have accounted for "employee engagement".

In the West, employee engagement is a major component of a company's CSR Policy.

- The saying 'a happier workforce is a more productive workforce' is as true as ever and has proven gains in enhancing employee creativity.

CSR Trends

- According to a study carried out by Dale Carnegie and MSW Research, firms with staff that feel more engaged perform better than companies with unengaged employees by up to 202 percent.
- CSR policies create a positive work environment, which is conducive for retaining staff and talent.
- A company's involvement with NGOs can go a long way in engaging employees. In the West, there is a growing trend of companies adopting gift-matching practices, whereby an employer makes a donation to the chosen charities of its staff and may even pay employees for the time they take to volunteer.
- By matching donations from employees to causes employees select, companies are able to provide a bottoms-up approach to corporate philanthropy. In the long-term, this creates an engaged employee base, which is proud to work for the company.



Encouraging Innovation

Implementing CSR can lead to breakthroughs in improving a product or business model. Therefore, the long-established “bottom line” of the corporate world is no longer the ultimate defining factor for a company's success; the “triple bottom line”, a term coined by sustainability consultant John Elkington, insists there are now three such factors: profit, people and the planet. By considering all three, ideas can spill over from one area to another, in ways that were not previously imagined.

Long-term benefits

Implementing CSR practices is increasingly vital for a company's sustainability and enduring success. The long-term benefits are nothing less than the long-term viability of the company. So, effectively managing relationships with customers, employees, owners/investors, suppliers, competitors, communities and government agencies and regulators, is the key to maximizing company valuation and building a sustainable company.

Done right and when truly integrated, CSR measures can help a company hit its revenue goals (because of higher employee productivity), experience better stock performance and secure a precious and enviable brand reputation for being responsible.

Good publicity and more media opportunities are thus generated by implementing CSR policies. This can do wonders for an organisation's long term business strategy; not only because it acts as a great instrument for advertising, but also because it exposes a company to fresh opportunities for forging new partnerships and growing its network.

CAP is currently offering services to corporates and their foundation in setting up their CSR initiatives, making them legally compliant and programmatically effective. For any further queries, write in to us – connect@capindia.in

**WOULD YOU LIKE
TO CONTRIBUTE
TO THIS MAGAZINE ?
WE WELCOME
YOUR VIEWS**

Many of you have requested that you would like your organisation featured in this newsmagazine. We usually now have a theme for each magazine (eg this one is governance). Our priority is to provide a voice to our CAP members & Affiliates and then the larger audience. If you would like to contribute your thoughts, your achievements, aspects of your work, kindly write to meher@capindia.in

Please Note: The editorial panel has the final authority for determining the final content of the Newsmagazine. Sometimes we have to edit the article for space & design.

Interaction

How Governance Matters

By: Meher Gandevia-Billimoria

There is a growing need and desire for nonprofit and non-governmental organizations (NGOs) throughout the world to be more effective and productive. One of the many ways they are achieving this is by enhancing diversity and strengthening the constitution of their Boards. Here are varied voices from the sector on some aspects of Board Governance.

The first step would be recruitment. Your non-profit should aim to establish a well balanced board that has a shared vision and collectively contributes skills and qualities you need to responsibly manage your organisation. Some of the essential skills and qualities that your NGO should be looking for in any board of trustees are:

- A passion for your cause
- Knowledge of either your cause, non-profit management, business knowledge or some other relevant professional expertise or experience
- Commitment and reliability
- Someone with direct experience of the issue you are working to resolve

We asked the founder of a start-up organisation and someone senior in the sector, what are some of the qualities of both the head and heart to look for in a board member and the one quality to not compromise on?



Sonia Saraf, who is starting out in the non-profit sector with her organisation - **Let's matter Foundation** and in preparatory stage to recruit her board feels, "I think a board member should first and foremost be dedicated to the social cause of the

organization. They should be a part of the organization not to earn money, but to bring about social change. They should be warm and compassionate and be able to reach out to people in a positive manner."

The one quality she would absolutely not compromise on - "Positive attitude! No matter what the circumstances, the board member should never give up."



Gulie Engineer, Trustee with **Bal Jeevan Trust** echoes similar views, "The most important qualities required in a trustee / board member are compassion, dedication and passion for the work. Integrity and honesty - these qualities are essential for the well-being and progress of an NGO and no compromise on these essential qualities to be accepted."

There seems to be a trend toward limiting each board member to a maximum number of fixed-year terms before that board member must be off the board. What should be an ideal tenure for any board member? All unanimously felt the same.

Aarti Madhusudan, Founder of **Governance Counts** – an organisation helping non-profits create appropriate governance strategies, structures and processes states, "I think as long as a board member is able to contribute to the organisation, there is no harm in having them continue. However, this tends to taper off usually in 8-10 years unless they have also evolved with the organisation. This is entirely dependent on the founder/SMT's comfort level and most importantly if the vision of the organisation is being met with, through the member's contribution. Pulling out an ideal "term limit" in the absence of the above is not a great approach. This applies to founders too."

Interaction

Gulie also believes, “I believe that a dedicated trustee can serve as long as she/he is fit to carry on the work.”

Sonia feels, “I don't think there should be an ideal time frame. I think such things depend on circumstances and putting down fixed and rigid rules might lead to compromises. There might be one or two particular board members, who might be required more than others.”



Becoming a representative on a non-profit organisation's board of trustees is a substantial investment that shouldn't be taken lightly. Nor should unnecessary risks be taken with bringing people one is unsure of, on to your organisation's board. Try to be as methodical and strategic in the development of your board.

Success of any board depends on making sound policy judgments in numerous situations that involve balancing different interests: risk versus reward; short term versus long term; effective oversight versus motivating management; ethical considerations versus sector practices; and competing interests of different stakeholders/other organisations in a similar space

Gulie recollects the risk situation her board constantly is threatened by, “Today Bal Jeevan is 20 years old because we took the risk of starting from under a tree in a Municipal garden with 20 children and one dedicated social worker but with no funds and no premises. Today we cater to 108 children helping them thru education and healthy nutrition, to face the world with confidence. The risk of losing the premises always looms largely over our head. Every year we apply for the renewal of the leave and license agreement and worry because of the uncertainty and hope we are not asked to vacate. Fortunately we are safe for now.”

The one internal conflict that often arises is that of governance v/s management. Many spoke about it but were hesitant to pen down their experiences. It is critical that the boards should focus attention on items/issues of critical importance to the organization rather than micro-manage.

Vahishtai Daboo is a Trustee at **V Connection Foundation** - a support group for hearing impaired and CEO at **The Education Audiology & Research Society** and is experienced at both ends - governance & management. “The role of a CEO and the board needs to be very clearly defined. The board essentially must perform 2 broad functions: - to provide guidance for and approval of the strategy as recommended by the CEO and second to provide oversight and ensure governance to protect the interest of its stake holders, especially that of the donors and the beneficiaries. It is the role of the CEO to drive the strategy and the day-to-day operations within the overall guidelines drawn up by the board in consultation with the CEO. The CEO must draw upon the diversity and experience of the board. The board in turn must have trust in the CEO and not interfere in his or her day to day functioning.”

Noorjehan Safia Niaz Founder and Managing Trustee **Ashana Trust**, “The NPO must be largely driven by the CEO if especially the CEO is a founding member of the NPO. It is his/her baby and should be allowed to be nurtured as per her/his vision. However, if the founder becomes part of the board and is not the CEO then he/she must ensure that the CEO carries his/her vision forward. It all depends on where the founder is placed.”

In addition, in a situation where the Board bypasses the CEO and deals directly with program staff or the vice-versa, what should a CEO do?

“Oh the CEO must object. It is the job of CEO to deal with staff. If there are issues the CEO must be involved in the process, no way should he/she be bypassed.”

Keeping in mind the maturity of an organization it may be worthwhile conducting board self-assessments. Boards tend to assume a performance assessment is designed to highlight bad performance, but this should not be the case. Review and reflection, are necessary to determine whether your board and your organization are meeting goals and making progress. An effective evaluation process will also lead to concrete plans for corrective action including a commitment on the part of the board to follow through so that the results of evaluation process lead to measurable improvements in board performance.

Interaction



If staff and program impact can and should be evaluated then why shouldn't Board Performance be evaluated?

Aarti recommends, "Board performance can and should be evaluated just as other aspects of the organisation are. The word "assess" or "evaluate" can be putting off. The best way for a Board to assess its performance is to engage in a self review process where the SMT has the opportunity also to provide feedback. It would also be critical to do this against agreed deliverables that the Board commits itself too against a plan that it draws up for itself at the beginning of the year. The trouble is that we don't articulate simply and honestly what we want the Board to do and then worry about evaluating them-that's a bit unfair :-). I think a professional Board will welcome a self-review - it will communicate that we are serious about engaging them prudently."

Vahishtai says, "Like in corporations we should certainly have a peer evaluation mechanism for board members. Based on the outcome of the evaluation, board members need to work out specific improvement agendas for themselves. Persistent non-performance should result in board members being asked to step down. In order to ensure confidentiality and objectivity an agency could also be requested to facilitate this process."

Sometimes there are a number of factors that help to explain why some boards do not function effectively. With lack of rotation and same people serving year after year, leaves little scope for new blood and new ideas to come into the board. A stagnant board can often lead to a stagnant organisation. Unproductive/non-performing/non-contributing

members who are not carrying out their commitments/duties as board members become major blocks to overall board effectiveness. In absence of a strategic plan that lends clear direction, the board can spend significant amounts of time talking about topics that simply do not matter.

How best should the Board address the issue of 'non-performing' or 'non-contributing' Board Members?

Noorjehan explains, "If a board member is disengaged, other board members must intervene and ensure her inputs. If it does not work then a non-performing board member must be ignored or at best allowed to function to whatever its capacity. But it is a good idea to evaluate board performance. Somebody has to start doing it to gain acceptability. It might scare away non-performing board members. If evaluation is built into the system and introduced tactfully then embarrassment can be avoided."

Aarti concludes, "Straightforwardly and by not mincing words :-). However, every opportunity must be created to engage them first and draw out their contribution. If this fails then, its best to request them to move on, directly."

Attitudes about trustee and board engagement are changing. Presidents, board chairs, and trustees increasingly are discussing the need for greater board engagement in governance

If you are a trustee/governing member/director of a non-profit organization, a board chair, and/or a board member, it is your duty to care for the organization in a way that helps to ensure its success.

Whether an NGO is just starting out or well established, the board of directors plays a critical role in keeping the organization accountable, transparent and legally compliant. In the early days, a founding board often works with the founder to set out the organization's vision, mission and goals. As the NGO grows and develops, adding projects, staff, resources, donors and partners, the board assumes greater responsibility for oversight and accountability to an expanding set of stakeholders. Diversity and yet inclusion is important to almost all non-profit organisations. Any non-profit must strive to achieve this balance. Building the right board and making sure its members are equipped to do their jobs is critical to success.

Connect To CAP

ASK THE EXPERTS

Non-profits are often too caught up with routine day-to-day affairs and often lack the requisite skills and/or fail to invest time in building capacity. CAP's consultants; a mixed spectrum comprising CAP's core staff and other professionals from the non-profit and corporate sector, provide organizations with guidance on core areas of Organizational Development such as Legal, HR, Finance, Strategy and others.

To avail any of our consultancies, e-mail Meher Gandevia-Billimoria on connect@capindia.in.

Can foreign citizens be members of the general body of a society?

Yes they can join as members of the general body.

**Governance Query answered by
Noshir Dadrawala, CEO – CAP**

We have some overseas speakers coming for our annual event. The gentlemen who are coming from abroad are being paid a small honorarium. This is being given to our NGO by a corporate. Please let us know the procedure for paying this amount to them.

If these are small amounts you may give the honorarium by way of cash against signature of the recipients on your NGO's vouchers. The voucher must have a date, state purpose (honorarium paid to Mr. for) and you or the NGO's treasurer must approve the voucher with signature. Alternately, you may even pay them by bearer cheque which they may en-cash at a nearby bank.

**Legal Query answered by
Noshir Dadrawala, CEO – CAP**

I am a trustee and I have been paying expenses on behalf of the trust from my personal funds by withdrawing cash from my bank account. I did this because there were no funds in the trust account. Can I show the expenditure in the accounts of the trust? Can I reclaim the expenses in future years when the trust gets some other donations?

In effect especially if you are a trustee or director of the trust it would be as though you had made a loan to the trust which you are now reclaiming and you have to then disclose such transactions. If the transaction happens in the same accounting year and is cleared in the books by the year end such that there is no outstanding expense or loan to a trustee or director then it will not be mentioned in the audit report.

If they are valid expenses you need to show the original receipts along with your expense claim but nonetheless it is not best practice. If there are not sufficient funds in the trust bank account It is always better if you first make a donation to the trust into its bank account and then pay the expenses by paying a cheque or taking petty cash from the trust bank account to do so. That way the trail of income and expenditure in the trust/society accounts are much more transparent and clearer.

**Finance Query answered by
Finance Consultant Tina Vajpeyi – CAP**

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My name is Padmini Somani and I am a **Founder Director** at **Salaam Bombay Foundation**

My earliest memory of being involved with social good/giving goes back... Giving was part of our growing up. Every year we would go to our ancestral village in Rajasthan to work in eye camps starting from just serving tea to the doctors to helping fill registration papers of the patients, to even helping in the surgical ward holding flashlights when the power supply ran out. Even in Mumbai, my mother had adopted a special school that we visited regularly making us realize how fortunate we were to not have any special needs as children. Both these interactions were always fun-filled and I looked forward to them, realizing that there was such joy in giving. It is our obligation to give back for all that we have received.

Salaam Bombay Foundation was founded with the philosophy/belief... that the only way to invest in the future of our nation is to invest in its children and in their health and education. It is our responsibility as a society to not only give our children access to education but to encourage them to benefit from it with relevant skill-building. Children also need to be guarded from risks to their health especially tobacco which has a high prevalence in children and youth across all stratas in India contributing to us having the highest oral cancer rates in the world! Salaam Bombay brings together the components of

How I Got Here

By: Meher Gandevia

health, education and skill building to give children a holistic development opportunity.

SBF is focused on... engaging Mumbai's most vulnerable “at risk” children through in-school programmes (leadership and advocacy) and after-school academies (skill building) that help build their confidence, self-esteem and commit them to stay in school while staying tobacco-free. Salaam Bombay's vocational development academies help children to contribute to fluctuating family incomes and encourages their families to continue their education while planning for a stable future.

Our work has come a long way because... we have witnessed change at the individual, community and government policy levels. Over 14 years, we have built a large network across beneficiaries, stakeholders, international organizations, and donors working in collaboration to generate a multiplier effect in the way we use our resources. Our programme started from 230 schools in Mumbai and grew to over 15,000 schools in Maharashtra alone training over 60,000 teachers. We have now sown seeds in 5 states across India.

Challenges along the way have been... Convincing school authorities and families on the importance of the programme, an uphill task at first. They felt talk about tobacco would lead their children to start using it. Moreover they saw no benefit in skill building. After we demonstrated the success of the children for college admissions and jobs, their attitude started to change. Now they are our ambassadors! Donors also at first

related to giving traditionally, as feeding programmes, or creating buildings that can be named or support for traditional education. Few understood how critical it is to develop children in a holistic manner. And when you add tobacco to this, the conversation would get all the more esoteric. But we stayed our course and the results spoke for themselves. Over the years our supporters have grown and now we see immense appreciation for the work we are doing.

What I enjoy about being on the board of Salaam Bombay... It allows me to participate in the good work of the organization but to have a view that is a bit removed from day-to-day operations. It also gives me an opportunity to learn from other board members, who are experts in diverse fields. I often leverage their experience for the cause. The board composition is very important to ensure growth of any organization and Salaam Bombay has a vibrant and diverse board.

Governance in any organisation is...like good housekeeping. With many more hands reaching out for support from basically the same pool of philanthropists, donors, grant agencies, good governance is the first point of entry. The board plays an active role in ensuring this but also organizational practices in accounting and operations contribute to more transparency and efficiency for the organization.

A board member's duty... bringing their knowledge and experience into the board room discussion to help the organization learn, grow and evolve. Being a watchdog for fiscal discipline and also ensure that projects are always meeting short and long term objectives as set out by the organization. NGOs tend to steer away from their original paths because of lure of funding into areas that are not their focus. Raising questions that help keep the NGO steadfast in their objectives but also guide them to learn and adapt to changing times without being rigid or resisting new challenges or opportunities.

To keep the organisation in sync with the times every board should... Encourage the team to take challenges. NGOs tend to be risk averse and boards can also play a role in always playing it "safe". But NGOs need to evolve with time and also with the needs of their beneficiaries and the changing laws and regulatory issues. It would help if the Board's composition includes a

wide range of experiences but also ages to help keep in tune with younger and fresher ideas.

The social sector in India today is.... Brimming with opportunities. Civil Society NGOs, Government bodies, Corporates, Individuals are all participating in change. There is a huge opportunity for everyone to play a role and make a difference. No matter how large or small the endeavor, it all adds back to the sum total of change that India is experiencing.

If there is one thing you would want to change about the social sector... I would like to see more effective collaboration between related stakeholders in order to achieve better thinking and action. By pooling resources, be it knowledge, tools, training techniques, whatever it be, NGOs will build efficiencies in their operations, their budget outlays, and eventually positively impact ROI for their donors.

My advice to those who want to work in the social sector.... many aspirants tend to romanticise working in the development sector wrongly believing a career in an NGO means more flexibility and a lighter work load. Social sector is far more intensive and is not a career break but an opportunity to step up and make a real difference! The social sector provides learning opportunities and experience that is unparalleled provided you are willing to give 100% into that experience. So delve within yourself and make a realistic assessment of why you wish to work in the social sector. Do your homework and align your area of interest with the appropriate NGOs. This can lead to a great personal growth and satisfaction.

At the end of a tiring day, I unwind by.... Snuggling up with my daughters and sharing our day's experiences. My children keep me inspired with their ideas and questions. Their energy keeps me going!

Salaam Bombay Foundation began in 2002 with a vision to work with children in Mumbai's slums. These children live in conditions of extreme poverty and drop out of school to support their families. Salaam Bombay programmes lead to the personal and economic empowerment of these children so that they may make the right decisions for their health, education and future. Salaam Bombay is present in over 200 municipal schools in Mumbai.

Debate

Should NGO Board Members be Remunerated?



Swati Apte

I feel strongly that NGO Board members should not be remunerated. Even when done with the best intentions, it leads to perceptions of spurious governance. In particular, it can raise unnecessary alarm bells in the eyes of critical stakeholders such as funders and government. In the long run, this can prove harmful to the NGO-affecting not only its regular functioning but also its very existence. I personally would separate board members from staff and not pay board members.

Having said that, I also know from experience that it is really challenging for small NGOs to attract good boards. At one level, you want to ensure that there is seriousness from board members about your cause. If there is some gratification these individuals can get from their involvement with your organization, their commitment is simply reinforced. To this end, I would suggest exploring non-monetary means to engage board members. For instance, is there a particular initiative within your organization's umbrella that an individual board member would

feel particularly connected to and excited about. For e.g., a project in their hometown. Involving them in it can get them energized about the whole organization. Similarly, many care about how they are perceived within their own community. Can your NGO do an engagement that helps them talk about their involvement and thereby gain respect of their community? This sort of engagement can bring double the benefit - a board member 'feels good' and more connected and it can also serve as an outreach tool for the NGO's work.

Of course each such mechanism has risks and needs to be used wisely. But I still believe NGOs need to find non-monetary ways to get board members excited and engaged.

Swati Apte, is a part of the Junoon founding team and a board member of Educate Girls

Educate Girls is holistically tackling issues at the root cause of gender inequality in India's education system.



Shripad Desai

'Be transparent with the grant makers' - It is indeed difficult to give one answer that fits all especially when India is home to more than two million NGOs operating in different sectors, geographies, sizes and formats.

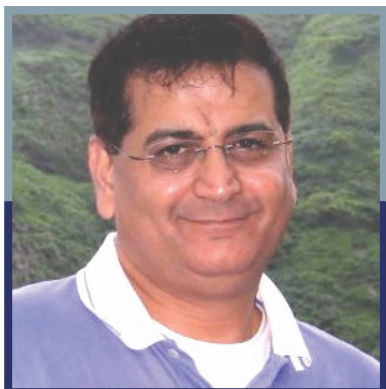
Within professionally managed medium to large NGOs that employ professionals to run operations, the trustee plays a dual role, that of a guide and spokesperson or PR. While the NGO gains from a heavy weight trustee, the trustee derives a 'sense of satisfaction and accomplishment' while contributing to the NGO. There exists a mutual gain in such engagement and hence 'monetary compensation' may not be desired or a must. For the smaller, founder run NGOs where the trustee is wearing multiple hats including the operations and spends his entire time for the 'objects of the

NGO', it may be necessary to pay the directors a modest remuneration, to ensure he is able to cater to his material needs effectively. It can be limited to a certain amount or modest percentage of the total budget of the NGO. While approving the compensation, the board should also define the roles, responsibilities and evaluation process for the 'paid trustee'. A fair and official remuneration may discourage the founder from engaging into 'reporting manipulation and accounting malpractices'. The NGOs have to be transparent with their grant makers and help them understand the 'why' and 'how' behind trustee remuneration.

Shripad Desai, Managing Director, AmeriCares India Foundation

AmeriCares India Foundation provide medical aid in India and in neighbouring countries, irrespective of race, creed or political persuasion.

Debate



Amol T Tope

One would in all probability assume that the said directors are associated with the NGO as s/he has the “cause “ close to her/his heart and hence would like to give their time, efforts and sometimes their own money too. Therefore, the question of compensating does not arise. Hence, on the face of the above captioned question, the response is a straight and simple “No”. However let us address this issue in comparison to a for-profit and ask ourselves the following questions to help us attempt answer the issue.

Is the NGO, in any way different, when it comes to

- a sustained existence?
- competition from within and beyond the sector for appropriate talent to lead the NGO?
- managing complexities at the helm

of the NGO be it high level of education, experience or skill sets.

In fact raising funds (thru her/his network) for the NGO is far more challenging and this could be a key differentiator when choosing a director. So if most of your responses to the above questions are in the negative, then logically what do you think about the response to the captioned question. Obviously, they should be remunerated! Right! In conclusion, the background, the duties, scope of responsibilities, accountability, past positions (integrity included) held, subject-matter expertise, research / analytics background etc. etc. required by the directors makes her/him worthy of compensation. Further respecting her/ his “knowledge, skill and the zeal” and the opportunity cost is something that needs to be given its due importance.

Amol T Tope, Director Learning & Development, Succeed Safe

Succeed Safe conducts corporate training and conduct outreach projects (CSR) in the area of Safety for school and other educational institutions under the United Nations Decade of Action for Road Safety



Deepak Bhatia

The board members at a charity will use their skill and expertise to ensure that the charity runs efficiently as per the objects outlined in its Trust Deed. They act responsibly in the interest of the charity, make well informed decisions and if the Trust Deed allows, then pay them for their out-of-pocket expenses to perform their duties as a board member. Jon Stettner, President and CEO at Make-A-Wish International says, “a board member is supposed to contribute with 3 x Ts to a charity – Time, Treasure and Talent”.As board members volunteer their services out of passion for a charity, and since volunteers don’t get paid, and compared to the staff of the charity, the board members do not put in 40hours of work/week for the charity, so does the question of remuneration to a board member arise?

Nonetheless, a board member, may provide some services or goods, and after all due diligence, if that service is required by the charity (e.g. accountant etc.) and this board member’s offer is the best and within the purview of the Trust Deed, then the same can be paid for to this board member. In UK, Lord Hodgson’s review of Charities Act 2006, recommended that large charities with over GBP 1m annual income, should pay a remuneration to the board members for their services. This has been opposed by the Directory of Social Change, with the remark that it is detrimental to the social sector, and there is no evidence that paying a board member would improve their performance. And last but not the least, would donors be interested in giving to a charity which pays its board members?

Deepak Bhatia, CEO, Make A Wish Foundation India Make A Wish grants the wishes of children with life threatening medical conditions to enrich the human experience with hope, strength and joy.

This is an on-going debate and views differ as do the reasons for remuneration. What are your views? Write in and tell us - connect@capindia.in

Overseas Outlook

Transparency, Accountability, and the Expansion of Nonprofit Self-Regulation: Developments in Asia

By: Prof Mark Sidel

I was delighted to have the opportunity to talk with a dynamic and vibrant group of NGO leaders in Mumbai on transparency, accountability and the expansion of nonprofit self-regulation in Asia and the US in January 2015, at the Think Tank Morning.

Why do we talk about self-regulation, and of an “imperative” for public trust, transparency and accountability – and what’s the relationship between self-regulation and nonprofit public trust, transparency, and accountability? When we think about these things, we think of the importance of governing our own sector, governing our own organizations, and the complexities of government regulation, as well as the fact – in most countries – that there are occasional and sometimes significant lapses in public trust, accountability and legitimacy of nonprofit organizations.

Regulation plays a key role in resolving these issues of public trust, accountability, and legitimacy. Nonprofit sectoral self-regulation plays a role as well.

Self-regulation – through codes of practice, codes of conduct, and a number of other means – can strengthen sectoral and organizational learning, set higher standards, help to unify the sector, help to improve public, government and media perceptions of the nonprofit sector; aid in defending against more and stricter government regulation; and aid in accessing donor funding or government benefits.

There are many forms of nonprofit sector self-regulation across the globe. Self-regulatory mechanisms can be voluntary or required, and it can range across a spectrum of self-regulation from “softer” to “harder,” looser to stronger. Self-regulation can include guidelines; voluntary codes of conduct; codes of conduct with a certification mechanism; more formal standards or standards with a certification mechanism; accreditation processes; rankings; ratings; and combinations of any of those methods. Some nonprofit sector self-regulation is national, and some is subnational (i.e. state-based). Some covers the entire nonprofit sector, while other modes cover sub-sectors – such as hospitals, or daycare centers, or other particular kinds of groups. In some self-regulation systems, there are “carrots” – donor funding, government funding, tax status, or other benefits may be conditioned on meeting certain codes or standards.

There have been multiple experiments and initiatives with nonprofit self-regulation here in India, with the overall goals of increasing public trust, strengthening capacity within the Indian nonprofit sector, and building collective action to try to forestall stricter government regulation. These have included voluntary guidelines and codes of practice and conduct; information disclosure and provision; certification mechanisms; and standards. India continues to experiment with many different means to strengthen nonprofit sector self-regulation.

The Philippines, has one of the earliest models of nonprofit self-regulation in Asia: The Philippine Council for Nonprofit Certification (PCNC). PCNC offers certification-based self-regulation with government support; it originally developed from a government decision that it would determine tax status for some nonprofits based on fulfillment of the criteria set by the NCPC.

In Cambodia, self-regulation has been undertaken, at least in part, as a form of collective action to defend and unify a fractured and attacked sector, through several nonprofit umbrella groups, and recently through the Code of Ethical Standards and Minimum Standards for NGOs in Cambodia.

In China, where state control over the nonprofit sector remains very strict, there is a growing and increasingly diverse nonprofit sector that includes service provision, advocacy and other groups. The Chinese nonprofit sector could be described as increasing third sector (including social service favored by the government), and decreasing civil society. Chinese nonprofit groups operate under a highly developed system of differentiated regulation (fenlei guanli) and changing government regulation.

Until recently, under this system of very strong state control, there were relatively few self-regulatory efforts. But the China Private Foundation Forum adopted a Self-Regulation Declaration of Chinese Private Foundations in 2009, beginning the process of coming to some sort of standards, at least within the philanthropic sector. And the quasi-independent China Foundation Center, founded in 2010, is helping with information provision and disclosure on private philanthropy. Meanwhile, not surprisingly, the Chinese state has also strengthened transparency, disclosure and accountability mandates for Chinese nonprofit organizations.



V Care Foundation, an emotional support group for cancer patients is LOOKING FOR COMMITTED VOLUNTEERS, ASSOCIATE VOLUNTEERS & PROFESSIONAL EXPERTS

Volunteers can help us with:

- Cancer patients care, emotional support & spreading awareness
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- School for children mostly cancer patients
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CENTRE FOR ADVANCEMENT OF PHILANTHROPY

**Centre for Advancement of Philanthropy
is expanding its programme and outreach.
We are looking for:**

'LEGAL CONSULTANT' – A Lawyer who would like to contribute their skills the social sector and help NGOs fulfill their mission. This position would be part-time, with some travel within India.

'COMMUNICATIONS EXECUTIVE' – Someone with excellent written and oral communication skills. This part time position would involve communicating to varied audience within the social sector. Your chance to work on the next issue of this newsmagazine.

'PROGRAMME ADMINSTRATOR' – Managing all the logistics of CAP's capacity building and other programmes. If organisation skills and responsibility are your strengths, this is the role for you.

If you are someone who has passion and skills you would like to use for various causes...
OR If you know anyone who would be interested in these positions, please do spread the word.

For detailed job descriptions, please send a mail to our COO - meher@capindia.in

National Outreach Initiative -

FCRA Renewal through FCRA Workshops

We have realized that there is lot of confusion and lack of understanding regarding the process of renewal, the compliances etc. Further, voluntary organizations need to be made aware regarding various compliances requirement under the FCRA law. There is a need to sensitize Voluntary organizations on the complex FCRA requirement.

A nationwide outreach initiative will be launched in the form of "FCRA Clinic for Voluntary Organizations".

- The first half of the day would be an input session on Compliance requirement of FCRA law and specific information on renewal. Post lunch, session will be for solving questions, answering queries or even one to one discussion on specific issues.
- Participants are requested to bring any relevant papers to be shown to the resource persons to seek their advice.
- This clinic will be very useful for senior leaders, managers and other members of voluntary organizations who deal with issues of FCRA in their own organizations.
- Fee per participant will be Rs. 450/ which includes Lunch, refreshments, cost of venue and resource material. Payment to be made at the venue.

RESOURCE PANEL

Dr. Manoj Fogla, FCA, Senior Consultant

Mr. Suresh Kejriwal, FCA, Senior Consultant

Mr. Noshir H. Dadrawala, Chief Executive,
Centre for Advancement of Philanthropy

Mr. J.K. Chattopadhyay, Ex-Deputy Secretary (FCRA),
Ministry of Home Affairs, New Delhi

Mr. Harsh Jaitli, CEO- VANI

Mr. Sanjay Patra, FCA, Executive Director, FMSF

Mr. Sandeep Sharma, Head Programme Desk, FMSF

Dates of Workshops in other cities

- Delhi 1 April 2015 • Bangalore 7 • April 2015
- Chennai 10 April 2015 • Lucknow 14 April 2015
- Raipur 21 April 2015 • Patna 5 May 2015 • Kolkata 5 May 2015
- Ranchi 7 May 2015 • Imphal 7 May 2015
- Bhubaneswar 18 May 2015 • Bhopal 19 May 2015
- Hyderabad 20 May 2015 • Udaipur 26 May 2015

MR NOSHIR DADRAWALA WILL BE ON THE RESOURCE PANEL FOR THE FOLLOWING WORKSHOPS HOSTED BY CAP.

MUMBAI

Thursday 16th April

YMCA INTERNATIONAL HOUSE

18 YMCA Road, Mumbai Central, Mumbai - 400008,
Next To Maratha Mandir

Time - 10 a.m - 3 p.m

PUNE

Friday 17th April

FORBES MARSHALL COMPANY

P B # 29, Mumbai-Pune Rd., Kasarwadi, Pune 411 034

Time - 10 a.m - 3 p.m

AHMEDABAD

Saturday 25th April 2015

BLIND PEOPLE'S ASSOCIATION

Jagdish Patel Chowk, Surdas Marg, Vastrapur,
Ahmedabad - 380015.

Time - 10 a.m - 3 p.m

GOA

Monday 4th May

HOTEL MANDOVI PANJIM

D. B. Marg, Panaji, Goa 403 001

Time - 10 a.m - 3 p.m