

To celebrate



Join us for a keynote address by  
**Dr. Ruth Shapiro**  
(followed by dinner)

on

*The Evolution of  
Social Investment in India*

Supported By  
**TATA TRUSTS**

Save  
the date

By Invitation Only  
Wednesday 9th November | 7 p.m.



With growing incomes, education and awareness, social investment is taking place at record rates throughout Asia. We see many first time philanthropists making funding decisions and passionate social entrepreneurs entering the field. Yet much of the understanding of the practice and theory around social investment comes from the West. Dr. Ruth Shapiro and her organization, the Centre for Asian Philanthropy and Society (CAPS) sought to understand what works within an Asian context. They found that there are important trends and strategies that are employed throughout Asia. Dr. Shapiro will share these findings and discuss the strengths and challenges for practitioners in India and around Asia.

Dr. Ruth A Shapiro is the Chief Executive and Founder of the Centre for Asian Philanthropy and Society (CAPS).



CENTRE FOR  
ADVANCEMENT  
OF PHILANTHROPY

CAP is a non-profit organisation that offers complete legal and compliance advisory to non-profits enabling them to be compliant in every respect. CAP also corporate foundations with their foundation advisory and CSR related compliance



CAPS is committed to increasing the quality and quantity of philanthropy and social investment in Asia. Dr Shapiro is currently writing a new book on philanthropy and social delivery norms and trends in Asia.

Quarter 2 - July to September 2016

# PHILANTHROPY

Legal news and updates for the social sector



## Social Enterprises



CENTRE FOR  
ADVANCEMENT  
OF PHILANTHROPY





In a slightly deluded belief that providing a cloud for uploading files is cutting edge community development 'Global cloud computing giant, Salesforce.com has defended its plans to trademark the term 'social enterprise' world wide'.

#### Quoting from the article:

*'US author and social entrepreneur, Auren Kaplan responded ... saying "the trademarking of "social enterprise" by Salesforce degrades the work of social entrepreneurs all over the world, and is unacceptable."*

'Many responses ... have described the Salesforce.com moves as absurd, ridiculous, foolish and brand suicide'.

This cartoon was illustrated by Simon Kneebone (simonkneebone.com)

(reproduced here with permission from the illustrator)

# PHILANTHROPY

Quarter 2- July - September, 2016



CENTRE FOR  
ADVANCEMENT  
OF PHILANTHROPY

## ABOUT US

Since its inception in 1986, Centre for Advancement of Philanthropy (CAP) has helped philanthropic organisations comply with the complex web of legal issues governing charitable giving in India.

## WHO WE SERVE

### CAP's Services Extend To

- | non-profit organisations
- | social entrepreneurs
- | NGO support organisations
- | family/community/corporate foundations
- | corporate social responsibility (CSR) units
- | grant making organisations
- | chartered accountants and lawyers

## OUR AREAS OF SUPPORT

### Legal Advisory

CAP specializes in all legal matters for non-profits and corporate social initiatives. CAP assists with Trusts/Societies Act, Income Tax Act, FCRA, Labour Law, Service Tax, VAT, Legal Aspects of CSR and a host of allied laws and good management & compliance practices.

### Capacity Building

CAP training and consultancy advice on the core challenges of compliance – legal, financial, good board governance and human resource management.

### Corporate Support

CAP also assists companies with their corporate foundation advisory and helps companies stay legally CSR compliant.

### Research and Publications

CAP has published resource books that have become sector references on fund-raising and good board governance. CAP also publishes a quarterly news magazine that enables its readers to be up-to-date with pertinent news and legal updates in the sector.

To know more about our work –  
[www.capindia.in](http://www.capindia.in)

# CONTENTS

<b>EDITORIAL</b> .....	2
Update On The Sector and Theme	
<b>LEGAL NEWS</b> .....	3
ESIC Hikes Wage Ceiling To Rs. 21,000	
<b>TAX UPDATE</b> .....	4
Goods & Services Tax (GST)	
<b>FROM THE LEGAL HUB</b> .....	5
Mysteries Of FCRA 2010	
<b>OVERSEAS OUTLOOK</b> .....	6
Onwards And Upwards	
<b>LEGAL NEWS</b> .....	7
67 NGOs Found Violating FCRA & Lokpal Update	
<b>CASE LAW</b> .....	8
Arbitration Of Disputes	
<b>CSR CONVERSATIONS</b> .....	9
CSR Funds For Social Enterprises And Technology Incubators	
<b>INTERACTION</b> .....	10
Should Social Enterprises Be Regulated Under New and Separate Laws?	
<b>READERS CONTRIBUTION</b> .....	13
Third Gender Of The Third Sector	
<b>DEBATE</b> .....	14
Social Enterprises – Fad Or Fact Of The New World	
<b>HOW I GOT HERE</b> .....	16
Akhil Shahani	
<b>ASK THE EXPERTS</b> .....	18
Frequently Asked Q & A	
<b>SOUL ENTREPRENEURS</b> .....	20
Karunashraya – An Abode Of Compassion	

**EDITORS** – Noshir Dadrawala  
Meher Gandevia-Billimoria

**DESIGNER** – Renuka Vernekar

**PRINTER** – Indigo Printers

CAP's CIN: U73200MH1986NPL041521

To contribute to this magazine, be featured,  
place an advert, send any feedback OR  
to receive your copy, contact us at  
(022) 22846534 or [connect@capindia.in](mailto:connect@capindia.in)



Supported By  
**TATA TRUSTS**





## Editorial



The Lokpal Act has put NGOs across the country in a tizzy. There has been some dilution and interim relief in the form of an extension until the end of December 2016. However, the issue is far from resolved. CAP and other organisations are continuing our dialogue with the government. However, if advocacy fails, we may be compelled to seek redress through a court of law.

Our take is that disclosure of the wealth of a trustee is not going to uncover an act of corruption. The disclosure of the wealth of those in a position to benefit from corruption would perhaps uncover receipt of bribes. However, a trustee is not in a position to demand a bribe in a public context and therefore disclosure of his wealth does not serve the purpose intended by the law. No doubt, some trustees are guilty of accepting bribes for providing trust beneficiaries with certain benefits. But those situations are no different from a purchase officer of a company or a doctor in a hospital taking a kick-back for providing an advantage. The Lokpal Act is not intended to stop or uncover every act of bribery in the country.

In the meantime the Ministry of Home Affairs continues to tighten the bolts. It now proposes to bring certain organisations registered under FEMA within the ambit of FCRA.

This issue of Philanthropy has a special focus on social enterprises. In our opinion, these enterprises are trendy but, essentially an old model under new and attractive packaging.

India is a democratic republic. It is a land of enterprise and opportunities. However, at the same time the legal regime is often not enabling enough. The challenges before the sector are enormous. To borrow from the wisdom of Benjamin Franklin: "The Constitution only guarantees the people the right to pursue happiness. You have to catch it yourself!" ♦

Noshir Dadrawala  
CEO – CAP



## Theme Thoughts

Social Enterprises vs non-profits – is there really a difference? Social Enterprises (SEs) are often confused with non-governmental organizations (NGOs) and through this issue of 'Philanthropy', we will try to understand the issue between the two! The thought for this theme was sparked off by our members Blue Ribbon Movement (a social enterprise) who feel that SEs are like the third gender.

What's the difference within the similarity? Setting up a social enterprise has much in common with creating a traditional non-profit. Both are typically a consequence of a desire to solve a pressing social need. A SE is a business created to further a social purpose in a financially sustainable way, while NGOs rely mainly on donor and grant funding. Revenue models differ!

Social enterprises are more dynamic than NGOs – a myth or a misconception that is still debate-able. SEs being a relatively recent development in India, the founders are usually younger and more entrepreneurial than most non-profit organisations that were set up 30-40 years ago. Today there are far more incubators or support organisations that offer not only seed funding but also mentoring assistance to SEs. Let's not forget in spite of lack of the kind of support today many of these NGOs have become sector icons.

We chose a bright neon green cover as we felt it is a new age color like our theme. The head, heart and revenue balance is almost a challenge for every organisation. A 'soul enterprise' should be what everyone should aim to be and that's what I felt with our visit to Karunashrya. We are grateful to all those who took their valuable time to contribute to this magazine and to the social entrepreneurs who were too busy to spare ten minutes, I would only say don't get so busy solving the large issues, (and trying to save the world) that you do not have time to do the little things. ♦

Meher Gandevia-Billimoria  
COO-CAP



## ESIC Hikes Wage Ceiling To Rs. 21,000/-

Aiming to make its health Insurance more inclusive, the Employees State Insurance Corporation (ESIC) has decided to raise the monthly wage threshold to Rs. 21,000/- in view of price rise and salary hike. Now, workers drawing a monthly salary of up to Rs 21,000 will be entitled to treatment during cases of sickness, maternity, disability and death due to injury during work.

Raising the wage ceiling from the existing Rs 15,000/- per month will help ESIC add 5 million workers. The move is expected to bring in 20 million individuals (assuming a family of 4) under the health Insurance net.

Recently, the government hiked the minimum wage for unskilled non-farm workers by 42 per cent to Rs. 350/- per day, from the existing Rs. 246/-. ESIC raised its wage ceiling by 40 per cent, considering the increase in minimum wages by the government.

ESIC has not only increased the wage limit, but allowed insured persons to opt for continuing the cover even if their salary breaches the ceiling. An employer has to contribute 4.75 per cent of a worker's salary towards ESIC as contribution while for workers; it stands at 1.75 per cent.

The decisions will come into effect from October 1, 2016

### Maternity Benefit (Amendment) Bill 2016 (MB Bill)

The Maternity Benefit (Amendment) Bill 2016 to amend the Maternity Benefit Act 1961 (MB Act) was passed in the Rajya Sabha on 11th August 2016. Subject to approval by the Lok Sabha and Presidential assent, the MB Bill is all set to be a statute on and from the date that it is notified in the Official Gazette. Post the recently concluded monsoon session of the Parliament, the MB Bill is now expected to be introduced in the Lok Sabha only in the upcoming winter session (usually, held during November-December), unless the proposed amendments to the MB Act are introduced by way of an ordinance in accordance with Article 123 (1) of the Constitution of India any time sooner.

The MB Act regulates the employment of women employees in factories, mines and shops or establishments for certain periods before and after childbirth and provides for post-partum care and other related benefits.

### Some Of The Highlights Of The MB Bill Are As Follows:

► **Increased Paid Maternity Leave:** The MB Bill seeks to increase the duration of maternity leave available for women employees from the existing 12 weeks to 26 weeks. Earlier, under the MB Act this benefit could be



availed by an employee starting up to 6 weeks before the expected delivery date and extending up to 6 weeks after the childbirth. This has now been increased to 8 weeks before the expected date of delivery and remaining 18 weeks to be availed post childbirth. For women who have 2 or more children, the duration of maternity leave shall continue to be 12 weeks (i.e. 6 weeks pre and 6 weeks post expected-delivery date).

► **Maternity leave for adoptive and commissioning mothers:** Keeping in line with the times, the MB Bill progressively seeks to extend certain benefits under the MB Act to adoptive mothers as well. The MB Bill provides that every woman employee who adopts a child shall be entitled to 12 weeks of maternity leave, from the date of adoption.

► **Work from Home option:** The MB Bill has also introduced an enabling provision relating to "work from home" for women employees, which may be exercised after the expiry of the 26 week period. Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer. Though not a statutory entitlement, it provides an encouraging tool to employers to adopt flexibility in the way women employees could function without disrupting the much needed care for their ward.

► **Crèche facility:** The MB Bill seeks to make crèche facility mandatory for every establishment employing 50 or more women employees. Women employees would be permitted to visit the crèche 4 times during the course of the day.

► **Employee awareness:** The MB Bill makes it mandatory for employers to educate women employees about the maternity benefits available to them at the time of their appointment. ♦



## Goods & Services Tax (GST)

August 3rd 2016 may be recorded as a red letter day in the history of Indian taxation due to the near unanimous passage of 122nd Constitutional Bill in Rajya Sabha, paving the way for roll-out of GST in India from 1st April 2017. Goods and Service Tax Bill has significantly evolved over the past decade and is hyped as the single largest tax reform in India since independence. It is estimated to boost GDP by 1.5 to 2%.

'One India, One Tax' will be the new reality with GST subsuming over ten indirect taxes and making India a common market. Apart from elimination of cascading effect, the benefits of simplified compliance, technological backing and uniform process across India will contribute significantly to 'Ease of doing Business'. However, the success of a business will significantly depend on the ability to understand and adapt to this new reality as certain existing business practices will have to undergo changes.

### Background

The indirect taxation regime in India has undergone many transformations over the past 5 to 6 decades. Introduction of MODVAT scheme in 1986, fungibility of credit between Excise and Service Tax (2004), rollout of VAT (2005 onwards) have over the years increased transparency in tax administration, reduced hassles to tax payers, and eliminated the cascading effect, thus benefitting the consumer. However, the federal structure of India has resulted in tax being administered by both Centre and State. Lack of facility to utilize credits across these two entities has resulted in partial cascading still being left in the system. Added to this, the burden of compliance has also increased due to involvement of multiple agencies. GST precisely addresses these concerns by driving uniformity across India through a single tax and ensuring an unrestricted flow of tax credit. Conceptually, GST is similar to VAT, meaning tax will be applied only on the value addition at each point in the supply chain.

### Registration

GST Registration threshold is proposed at Rs 4 Lakh for NE states + Sikkim, and Rs. 9 Lakh for Rest of India. However, the liability to pay tax will be only after crossing the threshold of Rs 5 Lakh for NE states + Sikkim and Rs 10 Lakhs for Rest of India.

### Dual GST:

In consideration of the federal structure of India, Dual GST has been chosen as the apt model wherein tax would be jointly levied by both Centre and the states on supply of goods and services.



### The components of Dual GST are:

- ▶ SGST: State GST
- ▶ CGST: Central GST
- ▶ IGST: Integrated GST

On intra-state transactions CGST+SGST will be applicable and on Interstate transactions, IGST will be applicable.

### GST Rates:

There are likely to be 3 sets of rates as below:

1. Merit Rate
2. Standard Rate
3. De-Merit Rate

### Returns:

The GST regime introduces the following changes:

The GST regime requires all businesses to mandatorily file monthly returns along with the requisite quarterly or annual returns. Even businesses which now file returns quarterly or half-yearly (such as returns for service tax etc.) now need to file returns every month.

There will now be '3 compliance events every month' compared to one event today. This means, businesses will now need to comply with the requirements of filing GSTR-1, GSTR-2 and GSTR-3 (as mentioned below) as against filing 1 return today.

The first compliance event (filing GSTR-1) has a due date of 10th of the subsequent month as against the deadline of 20th in the current VAT regime.

### What Next?

With the passage of the 122nd constitutional Amendment Bill in Rajya Sabha, the immediate next steps are:

- ▶ As this is a constitutional amendment, a minimum of 15 state assemblies also need to ratify the bill.
- ▶ Presidential assent to the bill and formation of GST council within the next 60 days from date of obtaining assent is required.
- ▶ Passing of CGST and IGST Bills (probably as Money Bill) in winter session of parliament and of SGST Bill in 29 state assemblies.
- ▶ Rollout of GST Network by January 2017. ♦

## Mysteries of FCRA 2010

### 'Foreign company' & 'Multi National Company' continue to be treated as 'foreign source'

In the previous issue of our newsmagazine we had in our article titled: "Who is Foreign & Who Is Not? Mysteries of FCRA 2010" made it clear that the recent amendment under Finance Act 2016 is specific only to sub-clause (vi) of Section 2(1) (j) and therefore companies within the meaning of the Indian Companies Act where more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by FIIs or FDIs will no longer be treated as 'foreign source'. However a 'Foreign company' or 'Multi National Company' (MNC) will continue to be treated as 'foreign source'.

However, some professionals continue to hold the view that since the intent of the Parliament was to take all foreign companies out of the purview of FCRA 2010, contributions from MNCs and foreign companies are no longer deemed foreign contribution.

We are of the view that unless Parliament specifically amends sub-clause (iii) (foreign company) and sub-clause (v) (multinational corporation) of Section 2(1)(j), both foreign companies and MNCs should be treated as 'foreign source' under FCRA 2010.

The Finance Minister's speech only highlights the more important proposals of the budget. Those are not the enactments by the Parliament. The law, as enacted, is what is contained in the Finance Act. Only after it is legislated upon by the Parliament, that a proposal constitutes the authoritative expression of the legislative will of Parliament!

Even recently, the Supreme Court of India in the case of Amin Merchant vs. Chairman, Central Board of Excise & Revenue (Civil Appeal Nos. 4676 - 4677 of 2013) has observed: "The speech of the Finance Minister and the financial/budget proposals duly passed by Parliament are two separate and distinct documents; the law as enacted is what is contained in the Finance Act after it is legislated upon by the Parliament. Budgetary proposals constitute legislative material antecedent to the enactment of law. The Finance Minister's speech only highlights the more important proposals of the budget. Those are not the enactments by the Parliament. The law as enacted is what is contained in the Finance Act."



Where Finance Act 2016 is concerned, Parliament has amended only sub-clause (vi) of Section 2(1) (j) and NOT specifically amended sub-clause (iii) (foreign company) and sub-clause (v) (multinational corporation) of Section 2(1) (j) and therefore we request organisations registered under FCRA 2010 to exercise care and caution. ♦

## Don't Forget Your Compliance

- ✓ **6th October**  
Online payment of Service Tax (ST)
- ✓ **7th October**  
Payment of TDS deducted in previous month (TDS)
- ✓ **15th October**
  - Payment of PF & file return of previous month (PF & ESI)
  - Filing of TDS Return for the Quarter July to September (TDS)
  - Last date for uploading receipt of FC for the second quarter (FCRA)
- ✓ **21st October**  
Payment of ESI of previous month (PF & ESI)
- ✓ **30th October**  
Last date for filing returns in ITR 7 & Audit Report in 10B (IT)



## Onwards and Upwards

Now reaching maturity, social entrepreneurship is on the cusp of an exciting period of innovation and growth.

For most of the 20th century, a traditional grant-giving model for supporting non-profit organizations, their management, and their funding had remained somewhat static: foundations supplied grants to non-profit organizations who delivered services which would otherwise not be available such as health care for the poor. Beginning in the early 1980's, the non-profit organization would evolve and diversify, taking on new characteristics throughout the 1990's that would change the way that philanthropists and non-profit organizations alike now think about and act on their work. Many of these changes result from an increased understanding and application of the tenets of social entrepreneurship.

### But what is social entrepreneurship?

In 1981, founder Bill Drayton introduced the concept of a social entrepreneur when he created Ashoka, now a global leader in incubating talent and ideas in the social sector. Bill put forward the idea that a social entrepreneur is someone who has the passion and rigor of an entrepreneur applied to a social problem. This was a new idea in two important ways. First, most philanthropy up until that point focused on the organization rather than the leadership, and the talented person or people who were driving the organization forward. Second, the idea that non-profits should still follow business tenets of sound management, transparent accounting and strategic

*Dr. Ruth A Shapiro*

planning among others began to take hold. Since that time, these ideas have led the way to a host of changes and innovations that have changed the sector in important ways.

The first major change has been the blurring of the once sacrosanct demarcation between profit and non-profit. What started off as the adoption of business rigor has evolved into the utilization of numerous tools, such as the use of profit as motive. This has shaken out with organizations sitting at various points on the profit—non-profit continuum, offering an array of options for funders (see chart below).

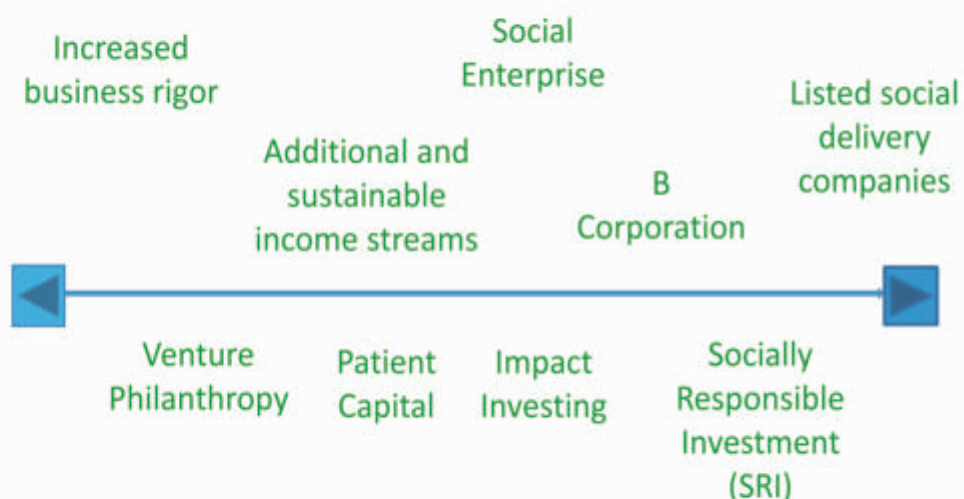
The innovative models and strategies that lie on this spectrum have grown from a freedom to move beyond traditional paradigms, with social entrepreneurs experimenting and giving birth to new hybrids.

One area of great change has been the increased emphasis on efficacy and measurement, with both donors and for non-profit managers paying heed to impact. One can understand how this change flows directly from the application of business rigor in the non-profit sector. What are the deliverables, what is the impact? What is the return on investment?

New metrics, coupled with a new culture of transparency fostered by the Internet, has brought about a sea change in how social-sector organizations measure and then communicate their success. Today, many understand well

## The Profit/Non-Profit Continuum

Traditional grant philanthropy  
and grant reliant non-profits



continued on page 17

## 67 NGOs Found Violating FCRA



Reportedly, the Home Ministry wants the Finance Ministry to stop registering NGOs under Foreign Exchange Management Act (FEMA) so that there can be only one custodian to monitor flow of foreign funds to these organisations. To make its case, the Home Ministry has drawn up a list of 67 NGOs which were found violating the Foreign Contribution Regulation Act (FCRA) but tried to escape penalty by invoking their FEMA registration.

There is a move to make FCRA 2010 the 'umbrella legislation' for registering all NGOs receiving funds from foreign sources. While many international donors and several NGOs from Europe and the US are registered under FEMA, reportedly they are now under the Home Ministry's scanner for using their liaison offices here to disburse funds to NGOs in India in violation of FCRA norms.

During its scrutiny, intelligence agencies have flagged names of several foreign donors who operate a branch or liaison office in India after getting a clearance from the Reserve Bank of India (RBI).

MHA is also aware that certain organisations have private limited companies (as in for-profit organisations which invoice funding agencies situated abroad for certain research and related services conducted in India) and escape FCRA on two counts:

1. Being a commercial, business, for-profit entity, it would be regulated under the Ministry of Finance under FEMA
2. Commercial receipts are not considered as foreign contribution even under FCRA 2010.

## Lokpal Act Update

As readers are aware an amendment to clause 44 in the Lokpal & Lokayukta Act (2013) was passed on July 26, 2016, effective retroactively from January 16, 2014. With this amendment, the assets of spouses and dependent children no longer need to be declared, and the statements filed by public servants will not be published on Ministry's websites. Individuals who meet the definition of "public servant" are now required to make a declaration of their assets and liabilities "in such form and manner as may be prescribed."

Though this amendment has diluted some of the more draconian provisions of the Act, private persons, particularly high net worth individuals, are becoming increasingly reluctant to continue serving as board members for NPOs in a voluntary capacity because of the requirement that they disclose their wealth. In addition, the requirement that the declaration be "in such form and manner as may be prescribed" is ambiguous and does not properly detail the extent of such disclosure.

Declarations were initially due by July 31, 2016, but the deadline was put on hold pending finalization of the amendment, and is now **December 31, 2016**.



CAP and several others are in dialogue with various Members of the Parliament and it is likely that this issue may get suitably addressed during the winter session of the Parliament. ♦

To keep in touch with the latest news related to legal compliance, stay connected to CAP through our blog on our website or through the Facebook page.



## Arbitration of Disputes Need for binding arbitration agreement in writing signed by all parties

Most Trust Deeds as also Articles of Association have an arbitration clause in case of disputes with beneficiaries and other stakeholders. How effective is this clause? Not quite, if one goes by a recent judgment of the Supreme Court of India (Vimal Kishor Shah & Ors. v. Jayesh Dinesh Shah & Ors.). Disputes between trustees and beneficiaries of a private trust are not arbitrable! The judgment is regarding a private trust. However, the principles remain the same.

### The Case

One Mr. Modi ("Settlor") created a family trust with a valid trust deed and constituted a private trust called 'Kaydee Family Trust' in the year 1983. The Trust Deed was executed by the Settlor in favour of six beneficiaries including **Appellant No.1** (Vimal Kishor Shah) and **Respondent No.1** (Jayesh Dinesh Shah.) The Trust Deed contained an arbitration clause to resolve disputes relating to the trust, trustees and beneficiaries by arbitration and that the arbitrator's decision would be final and binding.

In 1990's differences arose between the beneficiaries on issues of administration and management of the trust and these differences could not be mutually resolved. Respondent No.1 filed an application under section 11 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") before the Bombay High Court for appointing an arbitrator. Although the Appellants contested the application, the Bombay High Court rejected the Appellants' objection and appointed an arbitrator.

Being aggrieved, the Appellants filed an appeal before the Supreme Court. Appellant No.1 submitted that **the arbitration clause in the Trust Deed is not binding on him as he is not a signatory to the Trust Deed.** Appellant No.1 also argued that disputes relating to private trust matters are exclusively governed under the Indian Trust Act, 1882 ("Trust Act").

### Supreme Court's Verdict

To constitute a valid arbitration agreement, there must be in existence a valid and binding arbitration agreement in writing signed by the parties. If any of these elements are absent, the arbitration agreement would be rendered invalid and unenforceable.

In the case of a Trust Deed, the legatees or beneficiaries are not signatories to the deed and are not regarded as parties. The Trust Deed is not in the nature of an agreement



between beneficiaries. An arbitration clause contained in the Trust Deed does not satisfy the requirement of a valid arbitration agreement and therefore is not binding on the beneficiaries.

Moreover, disputes relating to private trusts, trustees and beneficiaries are not capable of being decided by an arbitrator despite existence of an arbitration clause in the Trust Deed. The Trust Act is a self contained code providing legal remedies for grievances with respect to the affairs and management of private trusts including grievances in relation to the rights, duties, removal and obligation of trustees and beneficiaries. For this very reason, disputes relating to private or family trusts are not arbitrable.

Interestingly all these arguments would be equally valid in case of a public charitable trust or a society registered under the Act of 1860.

### Learning from this verdict

Regardless any arbitration clause in your organisation's Trust Deed or Articles of Association; please ensure proper agreements with your beneficiaries and all stakeholders, with a clear and specific arbitration clause.

'Arbitration Agreement' means an agreement by the parties to submit to arbitration all or certain disputes which arise or which may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement may be in the form of an arbitration clause in a contract/agreement or in the form of a separate agreement. ♦

## CSR Funds For Social Enterprises And Technology Incubators



Funding social enterprises is possible under Schedule VII of Section 135 of the Indian Companies Act, where companies can fund startups incubated in 'technology incubators' connected to academic institutions. However, while a lot of CSR funds go into research and knowledge parks which in turn generate research useful to companies; this is not the same as investing in incubators for a social cause.

The Department of Industrial Policy and Promotion (DIPP) has written to the top 50 companies in India, soliciting their help to either institute new incubators or to assist existing ones in association with educational institutions. The Government of India has also gone a step further by publishing guidelines for providing private sector support to incubators, and also for setting up new incubators as part of their "Startup India" initiative.

**Currently there are over a 100 incubators connected with academic institutions in India and over 68 of them are recognized by the Government under its Startup India scheme.**

The startup ecosystem has been a significant contributor to India's economic growth. There are more than 10,000 of them in India and projected to cross 11,500 by the year 2020. India houses the third largest startup ecosystem in the world with funding to the startup space crossing 5 billion USD in 2015.

With the escalating growth of startups in India, one of the sizeable contributions to the space in terms of providing new ventures and young startups support, are incubators. Traditionally housed in academic institutions in India, incubators have been providing startups with everyday necessities including affordable office space, logistics support and internet. Over and above this support, incubators strive to bring in business networks, access to

customers, expertise that may otherwise be out of reach for startups, guidance and mentorship to tweak products and solutions, besides access to capital and capital markets.

### Notable Examples

- **Mahindra Group**, through its finance business, has invested in SustainEarth, which provides biogas solutions to rural areas, in prototypes and pilots to new areas and Sickle Innovations through CIIE;
- **Marico** has invested in Camtech, a health device through social enterprise incubator Villgro;
- **Bajaj Electricals** has partnered with the Centre for Innovation Incubation and Entrepreneurship (CIIE) – IIM Ahmedabad, in funding Onergy Solar, that provides reliable and affordable clean energy products for electrification and cooking.

These companies have adopted different models of CSR engagement; while Mahindra Finance and Marico have invested in areas completely unrelated to their businesses, Bajaj Electricals has chosen to assist a product related to their businesses, but with a social purpose.

Apart from this, incubators located in the Indian Institute of Science (IIS) and Indian Institute of Technology (IIT) Delhi have been funded with Rs. 50 Lakhs by multinationals while IIM Calcutta and BITS Hyderabad received Rs. 5 lakh each from a software company and SIDBI Venture Capital Ltd. ♦



## Should Social Enterprises Be Regulated Under New And Separate Laws?

*There is no legal definition of a Social Enterprise. There are myths and ambiguities surrounding these entities. They are currently popular, but, not quite positioned within either the business or the social sector. They continue to hover between for-profit and non-profit, but, at the same time, clinging resolutely on to the 'social' tag! We spoke to a few social enterprises to understand their views.*



**To begin with how would you distinguish a Social Enterprise (SE) from a non-government organisation (NGO)?**

**Nisha Bora, is Director at Elrhino Eco Industries Pvt Ltd.** They manufacture tree free hand crafted paper and paper products from forest waste and use it as a platform to generate support for the conservation of the One Horned Rhino and Asian Elephant. **Nisha** says “I think there is none at all, except that I can sell my company, and an NGO cannot be sold for personal profit. I think an SE is more or less an NGO, with greater restrictions in terms of compliances - for e.g. minimum labour laws, no possibility to raise non sales funds. In fact, as an NGO I would have been better placed to receive funds.”

**Tilisa Gupta Kaul is Director at The Artisan Foundation (TAF).** This SE was founded with the belief that there is a need to bring rural artisans into the mainstream market. Their focus is to preserve and promote traditional art & craft through sustainable livelihood initiatives. **Tilisa** feels, “While both social enterprises and NGOs are part of the social sector, the distinction really lies in the philosophy, and it shows up prominently in the organization's social value creation objectives and its revenue model.”

**Anukriti Goyal is Co-founder of Apni Shala Foundation.** They deliver life skills education programmes to schools and non-profit organisations that wish to focus on social, emotional and cognitive development of children. **Anukriti** tells us that the distinguishing factors between both are continuously evolving. “Both Social Enterprises and NGOs are for social good. The commonly discussed differentiating factors are based on their revenue model, their orientation

to bring the long term systemic changes etc. NGO itself is not a legal term, commonly grouping trusts, societies and Section 8 companies under the NGO umbrella. There is a need to assign legal terms on basis of revenue models - donation based models and social business based not-for-profit (Section 8) and for-profit companies. The latter coming under the umbrella of Social Enterprises.”



**The law, particularly the Income Tax Act does not accommodate a hybrid. The SE must decide whether it desires to be for-profit or non-profit. As of the moment, the only possible 'hybrid model' is to have two distinct and separate entities (one for-profit and the other a non-profit) work parallel to each other within a common social space. One entity functions as the commercial business arm and the other as the platform for receiving grants and donations and implement activities at the grassroots level.**

**What are the legal challenges faced by Social Enterprises?**

**Tilisa** reinforces what most SEs feel. “There is a lack of standardized legal structure (regulations concerning incorporation and compliance) for social enterprises in our country. Further, due to limited use of e-government platforms and lack of communication between various government ministries the entrepreneurs struggle to obtain simple clearances and exemptions. A social enterprise has to deal with central, state and local government departments to obtain various clearances. Moreover taxation is often a major issue as all non-profit organizations are registered as tax exempt but, tax authorities have not come to terms with social enterprises with profit motive yet.”

**Anukriti's** challenge is around funding, “Since there is no separate considerations for Social Enterprises especially the ones registered as for-profit companies, huge challenges are faced in raising funds from CSR (law itself does not allow), foreign funds etc. There are no special tax exemptions given for carrying out the activities.”

**Nisha** similarly agrees, “Compliances with receiving and disbursing funds are a big issue. As a for-profit entity, my hands are tied and it is impossible for me to receive any money for philanthropic disbursal; everything has to show up as sales! Besides, overall compliances are too many, opaque and complex for small enterprises who cannot afford a Company Secretary to take care of all this.”

**Many feel that laws in the country are not friendly for the social sector in general. For the longest time, non-government organisations that so far were dominant in this space have been struggling to not only understand the plethora of laws but also keep up with the demanding compliance. We asked if SEs find working within the current legal and regulatory framework inhibiting? Why?**

**Anukriti** agrees, “Yes, it is inhibiting for companies registered under companies act but completely working for social good. They work at low margins, operations costs but need to adhere to all commercial company laws. Additionally, at times it becomes confusing on what is applicable and what is not. And proper legal advice/services are generally expensive.”

**Nisha** concurs, “If the law does not differentiate between me and any profit oriented enterprise without a social mission, then why label me 'social' at all? It is very complex to traverse the line between profit and mission without muddying both, and one is constantly torn in two directions depending on who is asking the questions. Funders say they want to see returns, but also with big impact. It is a double burden, and an unrealistic one.”

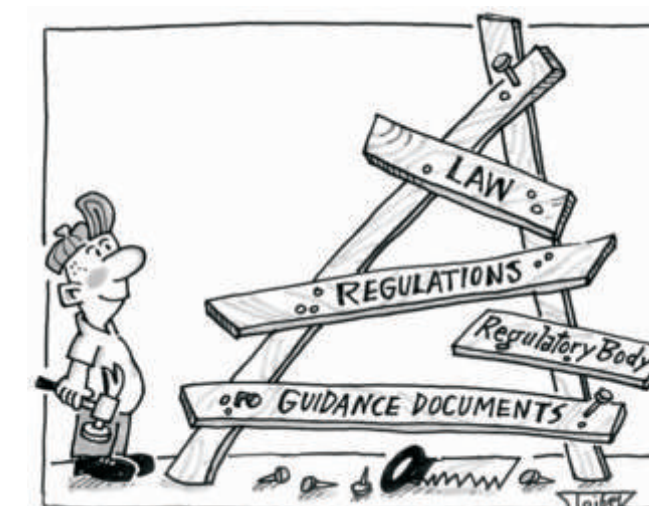
**Tilisa** views it this way, “There are many factors, which may potentially inhibit the smoother operations and development of a SE in India. These include social attitudes, religious beliefs and prevailing cultural factors. In addition, legal, regulatory and taxation rules will also play an important role. The primary reason is the lack of standardized, identifiable and widely agreed definition for the term social enterprise.”

**Is there a need to legally define a SE and what sort of legal and regulatory reliefs would SEs be looking out for under the current circumstances?**

**Tilisa** has her list ready - “Social enterprises are categorized as part of the development/social sector. Which leads to a lot of disadvantages for business operations. A mega-regulatory body must be created that acts as a single window for incorporation, approval, monitoring and compliance. This body should have state-level centers to reach out to remote parts of the country. Also, there is a need for a robust policy environment to enable social entrepreneurship, especially a policy that grants concessions or incentives to create positive social outcomes. This is necessary, as it will become hard to legitimize concessions, provisions for SEs verses other businesses. Important interventions that social enterprises need: Structured financial space, regulatory operating guidelines, CSR funding and self-regulation.”

**Nisha** wants, “Allow me a special income class that is not sales, not taxable, but goes straight into impact delivery. Let it not show in the balance sheet against profit, but against fund raising or something. Allow foreign remittance for this. The FCRA constraints are not the friendliest!”

**Anukriti** agrees there is definitely a need. “If we want to create the maximum social and environmental value out of the money being pumped currently in social sector through CSR, foreign foundations etc, we need to have institutions (SEs) which have well defined legal structure and are aiming to provide impact and scale. We also need smooth process for accessing foreign funds. Tax exemptions (benefits can be passed on to beneficiaries). Relaxation under Labour law, minimum wages act, PF act, for people being employed from informal/unorganised sectors, so that in addition to benefits under the act, they can also have more in hand salary.”





All around the world, social businesses with a mission to improve the lives of the poor and generate a profit are capturing increasing attention. One of the key decisions to be made is whether to be an NGO or SE. Once that is resolved key is to decide is the choice of legal structure for the SE.

**Do more SEs choose the non-profit model over the for-profit model or vice versa? Why?**

Anukriti's experience says, "Not necessarily. The choice of model depends mostly on the kind of activities, inherent revenue generating capacity and the intent of the people behind the SE. But there are increasing number of support entities which are supporting only for-profit model as it can scale and thereby have a larger impact. This might indirectly give boost for more for-profit models. Since it is linked to the social sector making profit is not considered good, however the talks should be focused on how the SE is utilizing the profit."

Tilisa sees a shift in the last decade, in the landscape of the not-for-profit and for-profit sectors due to the increased momentum of the social enterprise movement. "We have seen reshaping in both the not-for-profit and for-profit sectors - with many not-for-profit charitable organizations looking more and more like for-profit entities and vice versa. This has given birth to a new structure known as a hybrid model, which has joint ventures between the charitable and for-profit entities. Hybrid model based social enterprise has often been hyped as the model to embrace and practice as it provides an opportunity to serve two bottom lines simultaneously, reaping both financial and societal rewards. Moreover, it helps the organization self-sustain itself."

**Which model is preferred most by funders and why?**

"I think there is greater acceptance of for-profits; even grant making organisations want to see a revenue model in place. Except government schemes, I have seldom come across funds that exclude private companies." says Nisha.

Tilisa is positive with advent of social entrepreneurs, fund generation has not remained a major challenge anymore. "The lack of funding opportunities was one of the major disadvantages social enterprises faced in the past but that is changing. The funding was lopsided; it was either focused on for-profit business to generate higher returns or for non-profit charitable organization for social impact. Investors are coming to realize that social enterprises of all sorts can also generate financial returns that will make them attractive to the right investors. Therefore, we see for-profit social enterprises being preferred organization for funders."

Anukriti is certain there are both types of funders. "The purpose behind the funding differs. For non-profit, the funders might have to keep changing as they will keep needing funds to run the regular operations and have a good part of the team dedicated to reach out to funders. Funders will be looking at impact. For-profits will have the revenues taking care of the operational cost (partially or fully), but they might need funds for scaling. Here the funders look at impact, increase in impact with scale and also to get returns on investment (might not be as high as a commercial business)."



**Ultimately, both SEs and NGOs exist for social good. Hence, do they need to be mutually exclusive?**

Tilisa concludes, "Both social enterprises and NGOs are categorized as part of the development/social sector. A blended approach is the best strategy to succeed and to create social value that transforms the lives of those who lack the capacity to change the social and economic ecosystem."

Nisha adds, "I firmly believe, not. All we need to do is build in legislation to tackle some key issues, such allowing some form of private ownership of assets and discretionary powers to allocate incoming funds as income vs fund raised for impact work. If we can demonstrate that the funds have indeed been used for development work, then why should it be treated as taxable sales income?"

We all have to agree with Anukriti's closing statement, "There is need for both to exist. But a stronger legal and tax framework can bring in more transparency and efficiency." ♦

## Third Gender of the Third Sector

By Abhishek Thakore

Once upon a time, a long long time ago lived a demon called "Hardtosolveproblemu"

He was the greatest problem ever born on the planet. Social workers far and wide feared him - those who approached him went broke and committed suicide.

No one would dare to touch him. Funders did not have a category to classify him. No monitoring and evaluation framework could ever measure him.

Now you will want to ask what gave him so much power?

For that, we go back to even longer longer ago. It was a time when problems were having a hard time surviving. They were getting solved one after another and the world was getting better!

At such a time, however, there was one problem, very small and insignificant.

This problem prayed to the evil demon "Seperatasur". Pleased by the penance, the demon asked this little problem what he wanted.



The little problem said, "Oh Seperatasur, make me a HUGE problem that can never be solved."

Seperatasur said, "That is not be possible, my child. There isn't any problem that can never be solved."

After some thought, the little problem said, "Okay, in that case grant me a boon that I become a problem that can be solved neither by a charity nor by a for profit, not by law and legal entities nor by governments and bureaucrats, not by self sacrificing social workers nor by money splashing philanthropists. Let me be solved neither by scale nor by niche, neither by analysis nor by measurement."

"I grant you the boon, little problem. From today, you shall be the feared demon Hardtosolveprolemu," said the evil lord, and disappeared.



Over time, the problem grew bigger - he became ferocious and gargantuan.

Many tried to solve him. But they failed.

When donors tried to support this work, they went bankrupt. When for-profits came to support it, they saw no market. They all were troubled. They prayed to Lord Togetherwearestronger, the patron saint of the social sector.



The lord, listening to their woes, took form on Earth as a unique entity - the Social Enterprise (Socialenterpriseswar).

This form of the Lord had never been seen before.

It did not make profits but did not rely solely on charity. There was no legal entity that could fully capture it and it had varying definitions. It fulfilled aspirations of the millennials financially and yet, channeled their creativity to maximise impact.

After a slow initial phase, Socialenterpriseswar gained momentum. It approached Hardtosolveproblemu.

What a fight it was!

The problem resisted in all ways. Its social, political and cultural dimensions acted together to maximise its challenge.

But nothing could stop Socialenterpriseashwar. She changed form based on the need. She was able to create solutions that went viral and scaled up and yet had local contextual applications. She grew to accommodate various ways of solving issues in new ways. She could hold paradoxes beautifully.

Finally, after a long battle, she brought forth a combination of all the activities of her ecosystem. She was finally able to solve Hardtosolveproblemu.

She was hailed as the third gender of the third sector - a form that would solve the most difficult problems that were faced by us. Problems that no one would solve our touch, but needed to be dealt with.

So remember, dear readers - when a social enterprise appears before you, it is Lord Togetherwearestronger himself. Remember to offer some prasad (organizational funding), recite a few sacred mantras (theories of change) and avoid giving that strange, bewildered look! ♦



Abhishek Thakore is the co-founder of Blue Ribbon Movement, an ecosystem of social initiatives that build leadership for a better world.



## Social Enterprises - Fad Or Fact Of The New World

*Social enterprises have become trendy and almost every donor, investor and entrepreneur's favorite. Many believe these enterprises are the answer to every developing country's myriad socio-economic woes. Quite a few disagree and feel that there is undue hype over what's essentially old wine in a new and attractively packaged bottle!*



**Tina Vajpeyi**  
Finance Consultant

*Tina Vajpeyi is qualified as a Chartered Accountant in the United Kingdom. She has held various roles such as is a Finance Consultant with Aangan & CAP and prior to that she was the CFO at The Akanksha Foundation.*

The economy of a country can be assisted when more jobs are created so I personally feel that we don't need to define enterprises into separate categories of social enterprise and non social enterprise. Both should be creating opportunities for employment and this in itself filters down directly or indirectly to a wider population. By thinking of social endeavors as nonprofit companies it may shackle the whole thinking of growth. Without profit one can not necessarily set aside enough for capital expenditure and research and development of further products or services.

Social enterprise is not clearly defined so whilst one could argue that a processed food company that makes expensive foods for a high income population is not one, it could nonetheless be implementing technology and other strategies to help farmers increase their yield. Similarly the law allows for a company that provides teacher training to both high fee paying schools and municipal schools to be set up as a section 8 company but is it a social enterprise? My sense is that people who are entrepreneurial by nature and have great ideas to develop products and services may not think as ambitiously about growth if they set themselves up as a section 8 not for profit company.

Rather than a separate category for social enterprises there can perhaps be better tax incentives for small companies or for those set up in very impoverished rural areas. Social Entrepreneurs need not think that profit is a dirty word. After all higher profits and income should also lead to higher donations. Similarly more taxes paid on profits mean more money available for better public infrastructure, roads, health care facilities etc which benefits the population at every socio economic level.

### Social Enterprises can be game changers in solving India's social sector issues

Social enterprises create innovative products and services to solve social problems through commercial strategies. Social enterprises are not business operators who simply wear a social tag. We've come across many founders with impeccable track records who have started social enterprises to solve social issues across health, energy, skills, livelihoods, water and so on.

Some great examples of social enterprises are Aravind Eye Hospital that was setup way back in 1976, LabourNet and Head Held High in skilling, Rural Shores for rural BPOs, SELCO, Tara and Ecozen in energy and GRoboMac and Kamal Kisan for agriculture.

Another important aspect that demonstrates the sustainability of the SE movement is the evolution of the roles of impact investors and large donors in actively supporting SEs. Aavishkaar, Acumen, Ankur Capital, Omidyar, Unitus, Villgro, Menterra, Michael and Susan Dell Foundation etc. are providing early stage grants or equity and guiding SE founders to scale up operations and service delivery.

Although many companies are interested in partnering with SEs, we have not seen a major shift in funding patterns when it comes to CSR. Companies prefer to fund NGOs as the laws are still evolving with respect to SEs after the Companies Act, 2013 was introduced. Few companies that have been early movers and have partnered with SEs for their CSR are the likes of Mphasis, Mahindra Finance and Genpact.



**Anil Misquith**  
Executive Director,  
Strategic Initiatives  
Samhita Social Ventures

*Samhita works with companies and foundations to deliver effective corporate social responsibility initiatives.*



**Akshat Singhal**  
Co Founder  
The Blue Ribbon Movement

*The Blue Ribbon Movement is an ecosystem of social initiatives that build leadership for a better world.*

Avanti Foundation in collaboration with BRM started Avanti Young Women Leadership Program in 2011. It was conceived with the objectives of:

- Bridging the gender inequity
- Developing leadership and social skills among young girls
- Exposing them to social issues, thereby creating large scale social impact.

What started with 250 girls, has reached 13000+ girls in 5 years. Besides building life skills among the girls, more than 25000 citizens have been made aware about social issues through this initiative - a kind of ripple effect!

A cooperative, non-profit, for-profit or any other form are social enterprises as long as their objective is doing social good.

What differentiates them from their counterparts is that they:

- Keep cause at the centre instead of wealth creation.
- Collaborate and engage different stakeholders in the process of addressing social issues.

Based on these differentiating factors, the dynamics of social change and potential impact that social enterprises can create, can't be ignored.

More and more individuals and organisations are looking for ways and means to make a valuable contribution to society. Given this scenario, social enterprisess are surely here to stay, have a say and make a way!



**Rukmini Datta**  
Corporate Social Responsibility  
Cipla Foundation

*Cipla Foundation was registered in 2011 to take Cipla's socially focused business legacy forward. It mirrors Cipla's relentless commitment to improve lives and fight inequities on key fronts. To build accessibility and affordability, initiatives focus on Health, Skilling, Education and Disaster Response.*

Recently, I attended an Executive Education programme on Social Entrepreneurship at an international business school. One of the case studies for discussion was about marketing by the sports apparel brand, Patagonia. The discussion got heated around the question: Is Patagonia a social enterprise, or is it just another business, apparently, with founders with social conscience and commitment to save the environment? The case study quoted the founder of Patagonia saying that he believed that business had the potential to alleviate the world's problems and inspire positive change. The class was divided among those who thought Patagonia was a social enterprise and those who thought it was not since its raison d'etre was to make profits.

In the world of impacting social change, evidently, social enterprise and "NGO" are not binaries. Given the scale and complexity of the problems that they both want to address, it will take all kinds of players and approaches, playing to their strengths and expertise to make a difference. The distinction if at all (and there will always be exceptions) is that social enterprise, being located within the framework of business, responds to manifested demands and fields competition, while "NGOs" often have to unearth latent needs and address them despite adversaries, and not competitors in the conventional sense. Low-cost, primary, health care and caste-based discrimination, even when it was not considered an issue that needs intervention, are examples of both categories.

Being located in the business framework, **financial viability** lies at the central core of the strategy with an uncompromising focus on **building replicable models** and this may come closest to being the differentiator for social enterprise. Not coincidentally these are the two aspects that funders and "NGOs" have locked horns on more often than any others in the last two decades at least. Beyond that, we are all facilitators, working in interlinked synergies, with marginalized communities who will ultimately make that definitive change in their situations. The effort to define one category as distinct or superior is really futile.



# HOW I GOT HERE

Akhil Shahani

*For Akhil Shahani, I would interpret the term social enterprise differently. **Social** - witty, an engaging speaker and the ability to get along with anyone and a range of situations and roles.*

***Enterprise** – The number of projects he is involved with, the range of perspective and the ease with which he carries it off. A pleasure and privilege to interview this 'Social Enterprise'...*

*By: Meher Gandevia-Billimoria*



**Funding for any social sector organisation...** is critical and should be the primary job of the organizations' CEO or founder. It is also important to have multiple channels of funding beyond donor grants, like paid consulting work, sales of products/services, third party IP development etc.

**Social Impact according to me is...** almost any organization that provides a service or product at an affordable price that enhances people's lives can be considered to have a social impact. This is not just limited to non-profits or charity.

**My thoughts on scaling up...** scaling up is great if you have the ambition and risk appetite to do so. However, be willing to accept the consequences of possible failure if it doesn't work out. There are many solo social entrepreneurs or micro organizations doing great sustainable work in thousands of pocket areas around the country.

**If I could change one thing about the social sector, it would be...** having the government create laws and a regulatory environment that benefit the sector and not hamper its operations.

**I believe Social Enterprises today are...** now becoming a great career option for many young talented people. The level of intellectual and operational capability in this sector nowadays is astounding.

**My advice to non-profit founders is...** focus on doing what you love & outsource the rest. Grow steadily and always avoid running out of cash.

**I am involved in various roles...** Managing Director of Shahani Group of Colleges, Director of Kaizen Private Equity Fund, Trustee of The Shahani Trust & SAGE Foundation.

**My family's involvement with the social sector...** dates back more than 60 years with our family trust. We have helped to found 24 colleges in Mumbai along with providing seed funding to 3 hospitals and setting up 3 low cost housing colonies in Mumbai.

**Challenges along the way...** have primarily been operational and execution driven challenges, to ensure the funds we put to work are utilized effectively.

**Our work has come a long way because...** the founder of our group, my grandfather, K.T. Shahani, started as a penniless refugee from Sindh after partition. He built our business and charitable activities with no external funding.

**The role I enjoy most...** I personally love mentoring non-profit and for-profit entrepreneurs. It's a great thrill for me to help to build organizations due to the intellectual challenge and the potential to impact thousands of people due to my mentees' growth.

**My one learning with these organisations/roles has been...** be open to ideas and inputs from others. Everyone has useful experiences and perspectives that could aid in your work. The key is to be willing to listen.

**Those starting out in the social sector should...** meet as many experienced people as possible in this sector to understand what really works and what doesn't. It's best to learn from others' mistakes before having to learn from your own.

**The one person who has inspired me...** my paternal grandfather, K.T. Shahani, who started as a penniless immigrant but was considered one of the Sindhi community's most respected philanthropists near the end of his life.

**My greatest strength and my greatest weakness...** greatest strength – I love to learn new things everyday. Greatest weakness – I tend to be impatient with others

**In my free time I...** read books at home and hang out with my lovely wife and daughters!

**The best way I deal with a difficult situation is...** keep my cool and quickly find a resolution that is fair to all involved.

(Continued from page 6)

that being able to continue succeeding entails understanding and measuring real impact and communicating results to one's donors and the community at large. As they might with respect to their own commercial interests, donors are asking for evidence on return on investment (ROI), before making better-informed decisions about where to place their philanthropy.

All of these changes have brought about an amazing outcome – the engagement of young people. Motivated by innovation and the social applications of enterprises more and more young people are considering a career that allows them to affect social change. Consider this statistic: From an initial cohort of 87 teachers in 2009, there are now 1,250 young people working with Teach for India.

**What is the future?**

With social entrepreneurship firmly rooted, innovation and experimentation is the order of the day within the social entrepreneurship space. From its start-up days in the 1980's, it is a sector that is now maturing, with learnings being absorbed and acted upon. Surely, there will be more impact investing in a continuing effort to find the right balance between profit and mission. There will also be more mistakes that we can all learn from: Just think of the painful history of SKS Microfinance but the valuable lessons that came out that experience regarding

**An incident that changed my thinking...** when the first company I started, closed down. I had applied all the MBA knowledge I had learned from one of the world's top business schools, Kellogg, to run it, but it still didn't work out. It made me start my quest to create an education system that taught practical applications in the real world instead of just imparting theoretical knowledge.

**A book I would recommend everyone should read...** Concious Capitalism by John Mackay (Founder of Whole Foods Stores). Its very inspirational for entrepreneurs for finding ways to build a business that creates strong social value along with profits.

**My great support comes from...** my family and the people in my companies.

**A day in the life of Akhil Shahani is...** constantly changing. I'm always on the move, so have never set a routine for myself!

the need to balance mission with profit. There will never be a one size fits all formula, but nuanced best practices will emerge over time.

I believe that a mindset from the technology sector has had a significant influence on the field of social entrepreneurship. After all, venture philanthropy stems from the venture capital model. There are also important attitudinal similarities – embracing risk, learning from failure and refusing to accept the status quo. I paraphrase Eric Weaver, founder of the US-based micro lender the Opportunity Fund, who said that there is not a killer app when it comes to social change, but there are certainly lots of programs to be written.

These are exciting times and for those of us with an appetite for innovative social change, with many programs out there being beta-tested to be encouraged about. ♦

Dr. Ruth A Shapiro is the Chief Executive and Founder of the Centre for Asian Philanthropy and Society (CAPS). CAPS is committed to increasing the quality and quantity of philanthropy and social investment in Asia.



# ASK THE EXPERTS

CAP offers compliance complete advisory in 8 core areas of non-profit management. We also offer corporate support advisory for foundations & CSR initiatives. Here we answer some frequently asked questions from our readers.

## LEGAL

**Q** We would like to make a couple of amendments to our trust deed. How do we go about this?

There is no provision under the Bombay Public Trusts Act 1950 nor the Rules of 1951 to amend provisions in your trust deed. However, what you could do is go in for a new 'Scheme of Management' u/s 50A of the BPTA 1950. The process involves drafting a new Scheme, filing it with the office of the charity commissioner together with various resolutions and other documents and get someone to get the Scheme approved and the Order passed by the CC. This could take several months and professional fees vary. Hence, before you plunge into this, PLEASE CONSIDER is this proposed change really essential?

## FINANCE

**Q** The quarterly FCRA donor's details should be submitted as per the notification either at the association website or FCRA site. Is it mandatory to do it in the FCRA site or could it be on your own website. When is it due?

The choice is Either Or ... hence ... follow whatever is more convenient. Uploading on MHA website is free, easy and perhaps a better option. For the 2nd quarter, it is due in the last week of September, hence please do so at the earliest.

## BOARD GOVERNANCE

**Q** Is it possible to appoint a NRI/ OCI as a Trustee? If yes, are there any legal consequences?

There is no specific bar on an NRI or OCI being appointed as a trustee under the Trusts Act or Income tax Act. Even under FCRA, foreigners are discouraged but OCIs and

NRIs are allowed. However, their contact details and OCI card number etc., must be disclosed to the Ministry of Home Affairs by filing Form FC 6.

## HUMAN RESOURCES

**Q** We are starting a training center. We would like to know whether it would fall within the purview of the Bombay Shops & Establishments Act. We would also like to know about its applicability to NGOs.

The Bombay Shops & Establishments Act 1948 extends to the whole state of Maharashtra. From reading Section 2(4) of the Act which defines "Commercial establishment" one may conclude that this Act would apply to NGOs as it includes charitable trusts and societies in the definition. However, having said that, hundreds of NGOs across the state are not registered under this Act, claiming that they are not "commercial establishments" running trade, business or commerce. Registration under this Act is online and the concerned authority in Mumbai is the Municipal Corporation.

## FUNDRAISING

**Q** Employees of one company (with foreign shareholding in excess of 50%) are donating to us some part of their salary under their company's 'pay-roll giving' initiative on monthly basis. All employees are Indian Citizen. But, the consolidated cheque is given by the company. Our query is whether that donation, should be accounted under FC or Indian.

Thanks to Finance Act 2016 contribution from such a company (more than 50% share holding by foreigners) will not be treated as foreign contribution under FCRA 2010.

## STRATEGY

**Q** How often should our organization carry out a strategy exercise? Would you recommend it be facilitated by an external consultant?

Usually a strategy exercise is carried out every 3-5 years or when the plans decided come to an end. It would be best to have an external facilitator (if the organization can afford one) as they are able to bring the necessary objectivity.

## COMMUNICATION/REPORTING

**Q** We are registered as a Trust Is it mandatory to bring out an annual report?

No it is not necessary for Trusts to bring out an annual narrative report. However it is a desirable good practice to showcase and document the activities of the organization.





## VOLUNTEER MANAGEMENT

**Q** We are looking at taking on an Indian born Canadian citizen (holding OCI card and a Pan card) for some project based work. The candidate would like to come on board as a full time person Are we allowed to offer full time employee with PF+Gratuity package to an international citizen.

An OCI has restrictions in taking up government job but no restriction working in Private Sector. In other words you may either employ this person or appoint as a volunteer and pay salary to this person as employee or honorarium as volunteer.

**danamojo**  
experience the magic of giving

India's first payment solutions platform for NGOs





 online payment gateway	 cash / cheque pickup	 international payment gateway	 automated 80g receipt
---	---	--	--

excited to know more? discover it now

care@danamojo.org  
080 4123 2544

register →

**danamojo guarantee**

 easy registration process	 fixed transparent pricing	 5 min integration to website	 on-call integration
--	--	---	--

<b>150+ NGOs</b> live	<b>250+ NGOs</b> in-process
--------------------------	--------------------------------



## Karunashraya – An Abode of Compassion

Modern medicine works many miracles, but when it comes to the point where it can no longer control or cure an illness, there arises a need to seek palliative care. In our last issue of the news-magazine one of our contributors had pointed out that it is more important to be a “soul entrepreneur” than a “social entrepreneur”. Visiting Karunashraya last month made me realise that this hospice is truly an 'abode of compassion' and can stir the soul within each one of us.

**S**implicity, serenity and sincerity is what greets you as you walk through Karunashraya. Smiling caregivers, swaying greens surrounding the water-lakes within the strong stone facades offer secure and selfless service. The physical harmonious ambience of the place lends itself to heal the physical and emotional agony right up to the last moments of a loved one. It is no wonder that this impressive structure has won acclaim as one of the most well designed hospice buildings in “20th Century World Architecture”.

**O**ptimism and the desire to follow his heart is what made Kishore Rao set up this outstanding home away from home open to all. Supported by an equally open-minded and stable team, this place has been able to offer 18000 terminally ill persons the care & compassion sine 1999. Orderly routines by the entire team ensure that each patient is well cared for within their individual needs and time frames to attain a peaceful end. The stamp of professionalism is evident in every aspect of their operations, as is the seal of passion.

**U**nderlying every aspect of Karunashraya's daily routines are the minutest details they have taken into consideration for the patients. The ward has half walls between beds to offer the needed privacy, with the upper half laced with cheerful drapes that allow breeze to flow through. Any request made by the patients for an food item at any time is freshly prepared and offered by the staff housed on site. Who knows? It may be their last meal. When death finally sets in, the mortal remains are quietly wheeled out into a separate room where the family can offer their final respects. The body is then taken out through a separate door that leads to the outside of the campus that is not visible to the side of the wards. This way the patients are unaware of anyone's demise and their mind is not allowed to worry about their own impending death.

**L**eaving Karunashrya made several thoughts linger in my mind. For all the suffering there is in dealing with terminal illnesses, there is solace of palliative care. For all those who do not know how to deal with the apprehensions of the end there is an assurance of comfort. There is the dreaded big C - and for that there is an even bigger Karunashraya offering a better C (compassion). Truly a soul enterprise.

# Entrepreneurs



Most people, and even some in the medical profession, become hesitant to address the last stages of life. Particularly after curative treatment has been completed the patient and family feel neglected and, in some cases abandoned. It was this stage of life that we wanted to address. Soon we realised that just medical care would be inadequate and psychological support to the patient and family would complete the care. This is the principle we have kept in mind and indeed forms the cornerstone of palliative care. A peaceful and dignified end is what we aim to ensuring and have succeeded.

**Kishore Rao, Founder & Chairman,  
Karunashraya - Bangalore Hospice Trust**



Karunashraya provides a unique model of Palliative Care where a patient can be looked after at home by our Home care team or as an Inpatient at the hospice. In many cases the patient can avail of both these facilities as and when the patients condition demands. Our doctors and nurses not only provide quality Palliative Care but they do so with compassion and love and respect for each individual patient.

**Gurmeet Singh Randhawa, Managing Trustee, Bangalore Hospice Trust.**