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Fiscal
Human Resources
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- ✓ **Saturday 16th April 2016**
10.00 am - 8.30 pm
Sunville Banquets,
Worli, Mumbai

Registrations close 8th April, 2016
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Quarter 4 – January – March, 2016

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PHILANTHROPY

Quarter 4 – January – March, 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

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About the Awards: The **Spirit of Humanity** is a platform to identify and honour excellence by not-for-profit organizations working for the underprivileged. Now in its seventh year, the **Spirit of Humanity** is a Recognition Platform that offers opportunities for sharing best practices, networking, cross learning, fostering alliances and recognition for not-for-profit organizations working across India. In each zone, NGOs will showcase their work within their chosen category, after which shortlisted candidates will present their case to **jury panel**. For each impact area, one finalist from each zone will qualify for a **national level jury**. Each finalist will receive a **trophy, certification, reward donation** and other benefits.



Hello, and welcome to yet another edition of Philanthropy for the final quarter of the fiscal year 2015-16.

The Union Budget 2016 did not bring much change or cheer for the voluntary sector. Probably, no change is better than change for the worse. Accordingly, there is still status quo with regard to business activities of charitable organizations falling under the category, “any other object of general public utility”.

“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:

1. Such activity must be undertaken in the course of actual carrying out of such advancement of any other object of general public utility and
2. 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.

On a slightly brighter note, reports indicate that CSR is gradually picking up and corporate India's CSR performance for 2015-16 appears much better than in 2014-15. Companies like HDFC Ltd., Axis Bank Ltd., and others can also heave a sigh of relief that they will no longer be treated as a 'foreign source' under FCRA. However, Service Tax will now effectively be chargeable at 15% and as we all know, NGOs providing services are not specifically exempt under Service Tax. At CAP, our focus continues to be 'Compliance' and our mantra for the sector remains the same: Compliance = Credibility.

Noshir Dadrawala, CEO, Centre for Advancement of Philanthropy.



CAP Archives

Five years ago the Philanthropy Leadership Confluence (PLC) organised by CAP, Samhita & Worldwide Initiatives & Network of Grantmakers (WINGS) brought together a diverse set of individual donors, Indian and international foundations, sector intermediaries as well as social investors to debate and discuss how donors can collaborate to ensure that their funding creates the greatest social impact. The theme back then was collaboration and it was felt that **collaboration** is essential to assemble the resources, expertise and influence required to solve problems as complex and critical as hunger, climate change and economic development.

As we enter CAP's 30th year, we have a conference on Compliance.



Keynote speaker Paula Johnson with Late Russi Lala & Noshir & Meher from CAP



CAP co-hosted the conference with Samhita and (in red standing) Priya Naik, CEO, Samhita



The audience

By Noshir H. Dadrawala

Impact of Finance Bill 2016-17 on the Voluntary Sector in India

1) Levy of tax where a charitable institution ceases to exist or converts into a non-charitable organization.

A charitable Trust, Society, Section 8 Company or an institution carrying out charitable activities may voluntarily wind up its activities and dissolve, or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In such a situation, the existing income tax law does not provide any clarity on how the assets of such a charitable institution should be dealt with.

In order to ensure that the intended purpose of tax exemption availed of by a trust or institution is achieved, a specific provision in the Act is required for imposing a levy in the nature of an **exit tax**, which is attracted when the organization is converted into a non-charitable organization, or gets merged with a non-charitable organization, or does not transfer the assets to another charitable organization.

Accordingly, it is proposed to amend the provisions of the Income Tax Act and introduce a new chapter to provide for levy of additional income tax in case of conversion into, or merger with, any non-charitable firm, or on transfer of assets of a charitable organization, on its dissolution, to a non-charitable institution.

The eminent jurist Mr Soli E Dastur is appreciative in principle of the proposal to tax charitable trusts which turn non-charitable (Chapter XII-EB, Sections 115TD to 115TF). However, he has expressed concern that the requirement that the trusts have to pay the tax within 14 days of the cancellation of registration u/s 12AA is impractical and would lead to great hardship.

Mr Dastur has pointed out that it is commonplace for the income tax department to revoke registration of charitable trusts on flimsy and frivolous reasons. There are scores of judgments where the orders of cancellation of registration have been struck down. In such circumstances, requiring the trust to pay the tax and interest pending the appeal is unfair, according to the noted jurist.

2) Phasing out of Deductions and Exemptions

In his Budget Speech last year, the Finance Minister had indicated that the rate of corporate tax will be reduced from 30% to 25% over the next four years, along with corresponding phasing out of exemptions and deductions.

a) Phasing out Section 35AC - Expenditure on eligible projects or schemes

Donors enjoy 100% tax deduction on donations given to institutions having registration under 35AC.

It is proposed that no deduction shall be available with effect



from April 1, 2017, i.e. from Financial Year (FY) 2017-18 and subsequent years.

b) Phasing out 35CCD - Expenditure on skill development projects

Weighted deduction of 150% can be enjoyed on any expenditure incurred (not being expenditure in the nature of cost of any land or building) on any notified skill development project by a company.

Deduction shall now be restricted to 100 per cent from April 1, 2020, i.e. from FY 2020-21 onwards.

c) Phasing out 35(1)(ii) - Expenditure on scientific research
Currently, the available tax deduction is 175% of any sum paid to an approved scientific research association which has the object of undertaking scientific research. Similar deduction is also available if a sum is paid to an approved university, college, or other institution and if such a sum is used for scientific research.

It is now proposed to phase this out as follows:

Deduction shall be restricted to 150% from April 1, 2017 to March 31, 2020, i.e. from FY 2017-18 to FY 2019-20. Deduction shall be restricted to 100% from April 1, 2020, i.e. from FY 2020-21 onwards.

d) Phasing out 35(1)(iii) - Expenditure on research in social science or statistical research

Weighted deduction from the business income is allowed to the extent of 125% of a contribution to an approved research association, university, college or other institution, to be used for research in social science or statistical research.

It is now proposed that deduction shall be restricted to 100% with effect from April 1, 2017, i.e. from FY 2017-18 and subsequent years.

Reason and Implications:

As per this year's Budget Speech, on account of various incentives and deductions, the effective corporate tax rate is 24.67% while the applicable corporate tax rate is 30%. There was a proposal to reduce the corporate tax rate from 30% to 25% over a period of time, accompanied by rationalization and removal of various tax exemptions and incentives. The current budget has paved the way for this by giving a road map for the phasing out of various profit-linked incentives and weighted deductions given based on amounts spent.

3) Service Tax

In the previous Budget, the Finance Minister had raised service tax rates from 12.36% (including education cess) to 14%; this was later augmented by a 0.5% cess for the Swachh Bharat Abhiyan.

In this Budget, the Finance Minister has not raised service tax, but he has announced a Krishi Kalyan cess of 0.5%, which will be levied on all services.

As a result, the total service tax liability, including the new cess announced, will now rise to 15%.

Service tax is levied on all services except a small negative list.

The Negative List entry covering 'educational services by way of (a) pre-school education and education up to higher and secondary school or equivalent, (b) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force and (c) education as a part of an approved vocational education course and the definition of 'approved vocational education course' are being omitted. However, the exemption shall continue by way of exemption notification No. 25/2012-ST.

4) Amendment to FCRA 2010

In the Foreign Contribution (Regulation) Act, 2010, the following proviso shall be inserted in Section 2(1)(j)(vi) and shall be deemed to have been inserted with retrospective effect from September 26, 2010:

"Provided that where the nominal value of share capital is within the limits specified for foreign investment under the

Foreign Exchange Management Act, 1999, or the rules or regulations made there under, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source."

This will mean that companies like HDFC Ltd. and Axis Bank, which were registered under the Indian Companies Act, but because of more than 50% Foreign Direct Investors (FDI) were to date treated as a 'foreign source' under FCRA 2010, will find relief and so will their NGO partners who do not have FCRA registration or prior permission.

5) Corporate Social Responsibility (CSR)

The Finance Minister announced nine focus areas of development, of which education, skills and job creation was one of the key focus areas.

It is proposed to set up a Higher Education Financing Agency (HEFA) with an initial capital base of Rs.1,000 crore. HEFA will be a not-for-profit organization that will leverage funds from the market and supplement them with donations and CSR funds, according to the finance minister. "These funds will be used to finance improvement in infrastructure in our top institutions and will be serviced through internal accruals," Mr Arun Jaitley said.

Companies may feel more incentivized to give to HEFA if there is tax deductibility. Also, it makes CSR reporting easy and the accountability shifts from the company to the 'Government NGO' (GONGO).

It is interesting that year after year, the Government creates new initiatives and expects CSR funds to flow into these initiatives, be it the Swachh Bharat Kosh or the Clean GangaFund, the Prime Minister's Relief Fund or now, HEFA.

Companies often contribute to funds like the Prime Minister's Relief Fund to be in the good books of the government, enjoy 100% tax deduction and minimize accountability and CSR reporting.

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.

By Noshir H. Dadrawala

Favorable Tax Decision for Tax Assessment of Trusts

Decisions taken by Bangalore Income Tax Appellate Tribunal (ITAT) in the case of Deputy Director of Income Tax (Exemption), Circle 17(2), Bangalore Vs Ohio University Christ College, Academy for Management Education [2015(12) TMI 42- ITAT Bangalore].

Academy for Management Education whose objects are provision of higher studies, offers MBA courses in Bangalore. It has entered into an arrangement with Ohio University, USA, under which Ohio University sends its faculty for teaching Academy's students in India for which the Academy pays fees to the Ohio University. Tax authorities raised several objections during the assessment.

Payments made outside India

According to the Deputy Director of Income tax (exemption) payment made to Ohio University, being an institution situated outside India cannot be considered as application for charitable purposes in India.

however Tribunal held that even if payments are made outside India, as long as the benefit of those payments is for the charitable purpose in India, it would be treated as application in India. It relied on several judgments, including Nasscom Vs DDIT [130 TTJ 377 (Delhi)]. It stated that S. 11(1)(a) of the Act clearly shows that the words used are 'is applied to such purpose in India'. The words are not 'is applied in India'. The fact that the legislature has put the words "to such purpose" between 'is applied' and 'in India' shows that the application of the Income need not be in India, but the application of funds should result and should be for the purpose of charitable and religious purpose in India.

Specific CBDT approval required for application of Income outside India

Tax authorities had also argued that the Trust should have applied for specific approval if it wanted to apply for funds outside India. Although the Tribunal allowed application of income outside India as long as it was for the charitable purposes in India, it went on to state that specific exemption from CBDT is specified only for those trusts that have as its objects, 'the promotion of international welfare.'

Liabilities not paid within the year are not application

The Income Tax authorities disallowed liabilities debited to Income & Expenditure account as not application for charitable purposes, since these are merely credit entries. Tribunal however, disagreed with this contention. In their argument they relied on Andhra Pradesh High Court's decision HEH Nizam's Charitable Trust, quoting: ".....We agree with the Tribunal that it is not correct to equate the word 'applied' with the word 'spent'. If the legislature intended that the amounts should actually be spent, there was nothing



preventing it from using that word.....The Tribunal was right in holding that the actual payment is irrelevant for purposes of finding out whether there has been an application of the funds..."

It further added 'Even where income has been earmarked and allocated for the purpose of carrying out the objects of the institution, it might be deemed to be applied for that purpose.' [CIT v Radhaswami Satsang Sabha, CIT v Thanthi Trust]

Loss on account of foreign exchange fluctuation

Loss on account of foreign exchange fluctuation arises on account of amount to be agreed to be paid in USD to Ohio University. Since the Tribunal already considered such expenditure to be treated as application any related cost on account of the said expenditure also needs to be treated as application. Accordingly loss on account of foreign exchange fluctuation was allowed by Tribunal to be treated as application of income.

Proper reasons not given for accumulation of Income

Assessing Officer disallowed accumulation of Income as Form 10 did not give specific reasons for accumulation.

Trust had stated the purpose of accumulation of income in Form No. 10, as purchase of fixed assets and fulfillment of the objects of the trust. Karnataka High Court in a case [DIT v Envisions (2015)] held that as long as the objects of trust are charitable in character and purposes mentioned in Form No. 10 are for achieving the objects of the Trust, merely because the details about plan of such expenditure has not been given, it would not be sufficient ground to deny the benefit.

Noshir Dadrawala, is one of India's leading legal experts 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 - connect@capindia.in

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CSR Picking Up Pace In India

CSR is picking up pace in India, but is still far from its target. While the initial response was slow and corporate India is still far away from the Rs 22,000 crore that was estimated to flow out of CSR budgets, the performance for the fiscal year (FY) 2015-16 seems to be better than that of FY 2014-15, the year in which the new Indian Companies Act, 2013 and the infamous Section 135 mandating CSR came into force.

Reportedly, 100 top companies spent around Rs 5,240 crore during the FY 2014-15, compared to around Rs 3,000 crore during FY 2013-14, indicating an increase of around 75% over the previous year. However, the amount was still around 26% lower than the prescribed amount. Even PSUs have spent only around 1.3% of the average of their 3-year profits on CSR.

While a large part of the expenditure was on welfare-related activities, including supporting government schemes, a few companies have invested in activities which are strategically aligned to their business activities.

Sector-wise spending is as follows:

- Hunger, Poverty and Healthcare – Rs 1,497 crore
- Environmental Sustainability – Rs 540 crore
- Rural Development – Rs 470 crore

Aligning CSR to Business Interests

All over the world, what truly drives CSR even without the law mandating it, is aligning CSR to one's core business interests.



Accordingly, several companies used CSR funds which were aligned to their business activities. For example, Tata Motors trains youth in technical and automotive trades. Similarly, Aditya Birla Nuvo runs a Skills Training Centre in collaboration with the Confederation of Indian Industry. It has trained and certified 1,036 youth in trades such as the handling and repair of electrical equipment, auto service, retailing, data entry, tailoring, and salon care. Other companies that do likewise are Godrej Consumer Products, Kotak Mahindra Bank, Maruti Suzuki, Colgate Palmolive (India), Asian Paints and Dr Reddy's Laboratories, to name a few.

The easy mode of CSR

Of course, some companies have taken the easy way out and contributed to the Prime Minister's National Relief Fund (Rs. 61 crore by 19 companies) and the Swachh Bharat Kosh (Rs. 47 crores by seven companies).

Reasons for not implementing CSR

The most common reason for failing to meet the mandated spending limit appears to be, "Funds committed but not spent". As many as 22 companies cited this as the reason for their inability to comply with spending limit norms. Another 18 companies have cited delays (in implementation, project identification, etc.) as the reason for not meeting with the spending limit.

The Future

Institutional Investor Advisory Services (IIAS) has projected spending of around Rs 8,500 crores during current FY 2015-16. According to IIAS, "There is a need for significant improvement in the quality of disclosure on CSR activities – particularly with regard to quantum of spending." However, it is encouraging to see that most of the larger companies have committees to oversee their CSR activities, and also conduct independent audits of these. It does appear that the frequency of review/monitoring will need to be increased, to ensure adequate tracking of CSR-related activities by the board.

By Noshir H. Dadrawala

Making A Difference Together

At the beginning of the year, we surveyed our readers to find out what they would like to read in our magazine. Many of them wrote back with CSR-related questions. We put these to the representatives of two corporate foundations - Pearl Tiwari, President (CSR and Sustainability) and Director, Ambuja Cement Foundation and Vartika Bhatewar, Manager, CSR at Rohan Builders, Pune.

1. What are the priority areas/chief causes of your company's CSR program? On what basis were they selected?

Pearl: Ambuja Cements Limited (ACL) conducts its CSR activities through its CSR arm - Ambuja Cement Foundation (ACF). ACL's plants operate mainly in rural geographies and ACF conducts its CSR activities in the communities neighbouring its plants. The community is placed as the primary stakeholder in the plant's activities and is thus an important determinant of the company's CSR programme. Over the years, the organization has evolved a strategic sustainable approach by which it designs its development programmes through participatory needs assessments and empowers communities to be stakeholders in their own sustainable development. ACF's communities and its stakeholders participate in identifying issues and evolving solutions in a systematic and continuous manner. Based on this approach, ACF's activities are classified under our major thrust areas of Water Resource Management, Livelihoods (including Skill Development) and Socio-Economic Development.

Vartika: The priority areas of our CSR initiatives are several and varied. These include eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation, promoting special education and vocational skills especially among children and the differently-abled, animal welfare, protection of our national heritage, art and culture through the restoration of buildings and sites of historical importance and works of art, and combating HIV/AIDS and other diseases.

We opted to support these causes because of our management's interest and passion, needs assessments, and ours or the implementing agency's expertise in achieving the desired outcome. Our links with the stakeholders was also a factor in our choice.

2. Is there another excellent program or cause that was recommended or considered that doesn't fall within your core areas?

Pearl: Skill training facilities in semi-urban and urban communities. Skill training is an urgent need, vital to livelihood and income generation in the country. ACF has 16 Skill and Entrepreneurship Development Institutes (SEDIs), which are all located in rural areas, near our plant locations. However, though it is outside our core area, it is essential to expand such institutes to semi-urban and urban geographies to meet the shortfall in these regions.



Vartika: We select our programs after very careful consideration of the cause, the beneficiaries, the impact that is being created, and mechanisms to monitor and report the input and outcome. However, if a new cause requires urgent attention and resources, for example, floods or other natural disasters, we would certainly take it up.

3. How does your foundation keep abreast of compliance requirements? What channels do you use, internally and externally?

Pearl: ACF works closely with various ACL departments such as Internal Accounts, Secretarial, Finance, Legal and Internal Audit to meet its compliance requirements. ACF also has its own internal Compliance Executive to manage these requirements. Additionally, ACF's activities are audited by its internal accounts team, the ACL Internal Audit team and also an external audit agency.

Vartika: As an organisation we are very sincere about compliance; whether it is related to environment issues, labour laws or our CSR. We want to and have adopted best practices internally (we recently received the CIDC award and have also received a 7-star Eco Ratings for two of our projects). As CSR compliance is a new arena, we have availed of CAP's expertise and they have helped us every step of the way. They make sure that our activities reflect our intentions.

4. What is your 'risk appetite' for projects? How do you manage risks while collaborating with implementing agencies?

Pearl: ACF is the implementing agency for all its activities, and with a staff of over 450 development professionals it can afford a good risk appetite for its projects. ACF receives a substantial amount of its funds from ACL which is a legitimate profit-making company and therefore has capacity to undertake risks for sake of innovation.

For example, in order to address the salinity ingress problem in Gujarat, ACF undertook the interlinking of canals in the Ambujanagar area. Interlinking of canals, while not a tried and tested methodology in salinity mitigation, seemed to be a technically viable solution and our community had faith in its



A one-day conference that aims to provide an overview of key concerns and challenges related to compliance in the non-profit sector

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benefits. ACF lent an ear to traditional wisdom and combined it with technical expertise to channelize water from flooded areas and harvested pits to other pits through seasonal canals, thus increasing the local population's access to irrigation facilities, land under cultivation and an improved water table, checking salinity ingress.

ACF has successfully conducted similar experiments, maximizing our communities' access to sanitation and creating Open Defecation Free (ODF) villages in Chandrapur, Maharashtra.

Vartika: As an organisation, we do the required due diligence of the implementing agency and also try to partner with established agencies in order to make sure that we achieve our CSR goals. We don't take risks w.r.t achieving the outcome, however, we are open to taking risks in terms of the cause that we select. For example, for International Women's Day 2016, we did a whole social media campaign around menstruation, emphasising the fact that it is not a taboo or an illness and that women should not be socially isolated when they have their monthly period. We addressed a lot of social taboos around menstruation and promoted the use of pads for sanitary reasons.

5. Are your employees and stakeholders engaged enough in your CSR initiatives? How do you ensure this?

Pearl: ACF was established with a mission to 'Energise, involve and enable communities to realize their potential' and its approach is to conduct program activities in close engagement with its stakeholders. This approach has been adapted to build community ownership in the CSR projects and make them sustainable in the long term.

ACF also facilitates a volunteerism programme to engage ACL employees in CSR activities. Employees lend their technical expertise and their precious time to help ACF facilitate Community Safety Initiatives, create HIV/AIDS awareness and provide guidance to students at SEDI.

Vartika: Over the years our employees have shown good intent by donating to causes like the Uttarakhand Flood Relief Fund and by participating in activities like painting a crèche for

children of migrant construction workers. We have the right values, however, now we are coming up with a plan to streamline employee volunteering and make it a part of 'Rohan culture'. Our management will be involved in promoting, facilitating and appreciating (through awards) this culture.

6. Has your company been involved with CSR prior to it being mandated by law? What drives you to do CSR beyond legislation?

Pearl: ACF was founded over 2 decades ago, in 1993, to initiate development activities in communities and villages neighbouring ACL's plants. The founding principle of ACF has been to empower the host communities with productive livelihood resources and to create and reinforce institutions, so that they prosper at the same rate as ACL. It was the ethos of ACL's founding management that our community becomes a partner in our business and is empowered to grow in a sustainable manner. This philosophy has consistently driven ACL's CSR initiatives beyond legislation and is reflected in strengthened people's institutions like Farmer Producer Companies, Women's Federations, Water User Associations, Village Health and Sanitation Committees and the like.

Vartika: We define CSR as giving our customers good quality homes; a good and challenging work environment for our employees; following environmentally sound practices; and donating and bringing our expertise to those who need help. So, yes, we have been involved in CSR since our existence. It is this thought process that guides us to do CSR beyond legislation.

7. How has mandatory CSR legislation changed the way you conduct CSR?

Pearl: The mandatory CSR law has not really changed the way we conduct our CSR activities. However, we have organised our reporting structure and documentation methods to comply with the requirements of the Schedule VII of the law. This has increased our association with the internal accounts and audits department of ACL. What the mandatory legislation has done is that it has freed up dedicated funds for CSR.

Vartika: Earlier, we never set aside any amount for CSR, we would take up activities as and when we heard about a cause. The new Act also brings a professional approach to conducting CSR by way of having specified project outcomes and reporting requirements.



By: Tina Vajpeyi

Being Mortal

The world over, medical professionals are taught how to cure people and how to keep them alive. No course provides in-depth or extensive training on how to handle those who are dying and in particular, elderly patients who are nearing the end of their lives. Anywhere in the world, the percentage of doctors specialising in geriatric care is minuscule.

The 'do no harm' principle that is a cornerstone of the medical profession means that doctors are not supposed to determine how and often when, a life ends. Unfortunately, most relatives and friends are not prepared to have those conversations with doctors, or even amongst themselves. Nor do any courses teach doctors how to talk about such issues with patients, their families, friends and care-givers.

Written in fluid prose, best-selling author Dr Atul Gawande's book, *Being Mortal* includes research and analysis into elder care and discusses what matters most to people as they age and become physically dependent, and encompasses various thought-provoking perspectives on the subject.

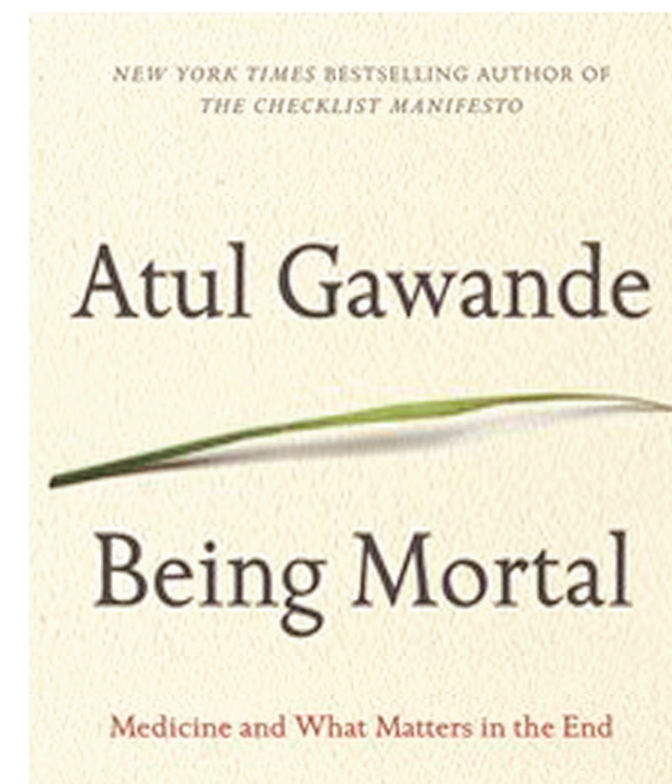
Drawing from his decades of experience as a surgeon and writer-researcher in the West, and the experiences of his family in India, Gawande compares and discusses the two varying scenarios. In India, until recently, it has mainly been the extended family that cares for the elderly, whereas in the United States, elderly people are mostly being cared for in privately-run, assisted-living facilities or living independently, for longer periods of their lives.

The book provides interesting statistics to explain the changing dynamics of family as technology and healthcare improve. In the US, for example, only 17% of the elderly now die in their own homes; whereas it was once the norm to pass away peacefully at home, death now often occurs whilst a patient is connected to machines in an ICU, in a hospital bed or while living in a nursing home.

The book also dwells on how medical insurance, advances in medical technology and treatments, and improved healthcare are changing attitudes about, and the dynamics of, mortality. More and more people are now trying to live longer, irrespective of the quality of their lives.

The author highlights the dilemmas that people grapple with when confronted with aging, illness and imminent death, and provides examples of how both families and patients themselves have made difficult decisions.

While the west has been addressing the subject of home care and retirement living for some time now, more traditional societies like India are less prone to do so because of ingrained family mindsets regarding caring for the elderly and also, a generalised avoidance of open and informed discussions about what matters most towards the end of our lives.



While all doctors and those involved in caring for the elderly – family or organizations will find this book immensely useful as they confront the subjects covered by it daily, *Being Mortal* really is a book for everyone, since it deals with ageing and mortality, a fate none of us can escape. And its language and treatment of its subject is such. Accessibly written, analytical and provocative, it will make the reader think about healthcare, treatment and end-of-life issues that they ought to consider as they age.



Dr Atul Gawande is the author of four books, all of them New York Times best-sellers, including his latest, *Being Mortal*. He is a winner of the Lewis Thomas Prize, awarded for science writing, and two National Magazine Awards. *Complications*, *Better* and *A Checklist Manifesto* are his other works. A surgeon by profession, he practices

at Brigham and Women's Hospital, Boston and is a professor at Harvard Medical school and Harvard School of Public Health, and a public health researcher. He is also Chairman of Lifebox, a non-profit organization making surgery safer globally.

Should you like to review a book or suggest one - connect@capindia.in

In response to our readers' wish to know a little bit more about the people at CAP, every issue we feature a board member and a staffer, asking them about their work life and life beyond work. In conversation with board members Aditya Vikram Somani and Nyrika Crishna, who have been on our board for 6 months, and longtime CAPpers Jerry Fernandes and Noshir Dadrawala.

Aditya Vikram Somani & Jerry Fernandes

Industrialist Aditya Vikram Somani is passionate about the arts and started Inner Courtyard in 2002 to promote emerging artistes. Our accounts manager Jerry Fernandes has been with CAP for the past 22 years and maintains a balance of accounts and lazy Goan afternoons. When industrialist and accountant got chatting, they unearthed a few golden nuggets of wisdom.



Aditya Vikram Somani

Jerry Fernandes

AVS: You have worked at CAP for the past 20 years. What is it about this organization that keeps you here?

JF: The support and cooperation that I have received from my superiors, the work culture and CAP's commitment to maintaining financial transparency and accountability.

AVS: What is the personality trait that you value most in a colleague?

JF: Selflessness.

AVS: From your student days in Goa to your life in Mumbai presently, what is the one positive, and one negative change that you see in our world today?

JF: One positive development, according to me, is that with advanced technology the world has come nearer to our homes. On the other hand, global warming and unrest have been negative developments in recent times.

AVS: How strictly should we treat those who violate the law?

JF: I think we should implement laws in the right perspective and without any favoritism.

AVS: If you were given Rs 1 lakh to donate to charity, how would you spend it?

JF: I would give it towards the upliftment of poor children in rural areas.

AVS: If you were the Prime Minister of India what is the first issue you would address?

JF: I would attempt to bring about peace and harmony among the citizens of India.

AVS: What are your dreams for your children?

JF: I hope they become good human beings.

JF: You are the chairman of Everest Industries. How do you manage to make time for philanthropic activity?

AVS: Both my wife Padmini and I are blessed to have been born in families where serving the community has been a part of our lives since childhood, so I have never known otherwise. Philanthropy and community engagement give me a deep sense of fulfillment. It also helps me understand people. And when you enjoy something you also find the time and resources for it. Attempting positive social change is very difficult, and sometimes thankless, but finally, very fulfilling. I also encourage people in our company to make time to support their local communities.

JF: Any philanthropist who is your role model?

AVS: I am inspired by many people. Three of them are from my own family; my grandfather Venkateshwar Somani who dedicated his last three decades to creating quality education institutions, my father-in-law Narotam Sekhsaria who has invested his resources and thought leadership in capacity building in the fields of education, medicine and the arts and lastly, my wife, Padmini, whose ability to grasp the complex development issues in our country helps her to execute large-scale programs which have a huge impact.

JF: What is the importance of relationships to you?

AVS: My family, friends and colleagues are my strength. I value their presence in my life and the support they give me. I endeavor to give them all I can offer.

JF: Would you allow your underage children to drive a car?

AVS: No. And I trust my children; they would never expect any illegal or unreasonable liberties.

JF: What steps would you suggest to eradicate poverty in India?

AVS: Simpler laws that support and encourage private enterprise and capital creation with minimal government intervention. That will generate employment across society and eradicate poverty. Free dole only increases poverty. Complex laws create inefficiency and waste resources.

JF: Priyanka Chopra and Deepika Padukone, which actress do you prefer?

AVS: Both Priyanka and Deepika are very talented, successful and beautiful. They are role models for many young girls. I would choose Priyanka to be a brand ambassador for women's empowerment and Deepika would be great for creating awareness on child health and development issues.

JF: What inspired you to become a CAP board member?

AVS: CAP has done such good work in our society and helped nurture so many organizations. Our own charitable trusts and foundations have benefited greatly from our interactions with the late Russi Lala and now, Noshir Dadrawala. So, it was an honor to be invited to join the Board. The opportunity to build capacity motivated me to agree. I hope I am able to steer more people towards philanthropy.

JF: Now that you're on the CAP board, do you think any changes are required to strengthen CAP further? If so, in which area?

AVS: Most people are keen to give back to society and help their communities, but they don't know how to go about it. CAP must expand its outreach to get more people connected, and build deep capacity and greater compliance and accountability in existing not-for-profit organizations.



See you at the Conference!

**Saturday 16th April 2016
10.00 am - 8.30 pm, Sunville Banquets,
Worli, Mumbai**

Nyrika Crishna & Noshir Dadrawala

Nyrika Crishna is CAP's youngest board member and a qualified solicitor. Her mum Smita Crishna has had long-standing association with CAP. Our CEO Noshir Dadrawala, with CAP since its inception 30 years ago, also has a legal background. Here's what the two legal eagles found out when they cross-examined each other.



Nyrika Crishna

Noshir Dadrawala

ND: How would you describe yourself?

NC: When I set my mind to do something, I focus all my energy on getting it done, usually to the exclusion of everything else! I tend to be very preoccupied with my weaknesses and am constantly trying to improve myself. Being curious by nature, I love the process of learning. I am in my element when I am surrounded by people who make me laugh.

ND: What are the three things you feel most grateful for?

NC: The good health and happiness of my family, the wonderful legacy my forefathers have built which always reminds me that 'to whom much is given, much is expected' and the ability to question everything.

ND: What is your idea of happiness?

NC: Happiness for me is being present in the moment. Whether it is achieving something I truly believe in or spending a quiet evening cooking with my husband and playing games with my nephews.

ND: Who, or what, motivates you the most?

NC: My mother is my chief motivator because of her grounded nature, her humility, her passion for learning and her unconditional love. She makes me want to be a better person.

ND: Do you believe in destiny?

NC: I do not believe in a preordained, fatalistic view of the world. I believe in the strength of the human will and the ability of the mind to transform any situation.

ND: How would you compare your generation with your parents' or grandparents' generation in terms of thinking, values or work ethics?

NC: My grandfather Naval Godrej is a role model for me, and I am very heartened to hear that you feel the same way about him, Noshir. He worked hard and never took a single vacation. He cut across age and class hierarchies because he connected with everyone on a human level, whether it was on the shop floor or in the boardroom. Although he did not go to university, he had an intuitive understanding of machines and an innate business acumen. He envisioned Pirojshanagar as a community with a school, hospital, employee housing and a welfare clinic; it was much more than just a manufacturing facility. Our generation is deeply committed to ensuring that we create strong and healthy businesses that are value-accretive. We want to multiply the impact of our philanthropy and to make Pirojshanagar an iconic township for future generations of Indians to value and enjoy. We have big shoes to fill, but we are very committed to ensuring that we emulate my grandfather's wonderful example.

ND: Your favourite travel destination, or idea of a dream holiday?

NC: I love active, outdoor holidays; whether it is trekking in the mountains or up a volcano, scuba-diving in the ocean, or going on a wildlife safari. I am happiest being in nature.

ND: Does your work excite you? And why?

NC: I am very interested in sustainability. A majority of Indians are not sensitised to the need for the preservation of the environment, proper waste management or access to clean energy. Working in the power distribution and solar space excites me because of the vast potential for clean energy in India. At Godrej, one of our core values is sustainability - whether it is in the production of greener and more energy-efficient products, protection of the mangrove forest adjoining our factory in Vikhroli, the education of children, the generation of clean energy or a reduction in the amount of waste we generate. It excites me to be a part of the effort to make India more sustainable.

ND: Your favourite social cause?

NC: I strongly believe in the need to further animal welfare. Animals cannot speak when they are in pain or being tortured and more often than not, their well-being is placed after that of humans. I feel we need to go the extra mile to ensure their safety and security.

NC: What were your reasons for joining CAP at such a young age?

ND: Quite frankly, it was not planned. I had a cushy job as a hospital administrator. However, the late Russi Lala, then Director of the Sir Dorabji Tata Trust was keen that I give wings to a dream that stalwarts like himself and H T Parekh (founder of HDFC), R R Chari (IRS) and Darius Forbes (Forbes Marshall Group) had visualized. The dream was to set up an institution to advance philanthropy. The original idea was create a 'chamber of philanthropy'; a 'clearing house of information on philanthropy'. However, within months, R R Chari who had just retired as Commissioner of Income tax (Trust Circle) and I realized that what charitable organisations needed the most was legal advice and an understanding of the nuances of various laws that governed them. The rest as they say, is history. So, to answer your question, I am with CAP thanks to Russi Lala. In fact, initially I was quite reluctant to join CAP leaving behind the security of a job that paid well, provided free lunch, accommodation and free medical treatment for the whole family. But, he said something that made me change my mind: Do you want to be a happy frog in a small well or be happier exploring the oceans? That did it. I have been exploring uncharted waters in the ocean ever since!

NC: In an ideal world, where do you see CAP in the next 10 years?

ND: I visualize it as 'THE PLACE TO GO TO' for all compliance-related issues. This visualization I owe largely to my colleague and CAP's COO, Meher. She has been instrumental in articulating this vision for CAP. I also visualize CAP consolidating and documenting all the intellectual wisdom that has been acquired over the past 30 years. And I would hope that what the founding fathers of CAP visualized and which I tried to give wings to with my limited capabilities, others will take to greater heights. The ocean is huge and there is much more for CAP to explore.

NC: How would you define personal success? And how would you define success for CAP?

ND: To me success means happiness, for myself and for others in my universe. It's the same for CAP. If those involved with it and those we serve are happy, that's success to me.

NC: How motivated do you think our generation is to work for social change?

ND: I would dare say, far more motivated than in my time! When I joined CAP in my mid-twenties, family and friends thought that it was suicidal. They all felt that one joins the social sector only post-retirement. Today, it's very different; successful men and women are giving up corporate careers midway to serve the social sector. And the sector is far more organised and professional than it was 30 years ago.

NC: If you had to advise a young person starting out in his/her career on the three most important things to keep in mind, what would they be?

ND: Do not be in a hurry to prove yourself or reach the top. First deserve, then desire. Also, be patient. Rome was not built in a day, nor can any life be built in a day. Enjoy the journey and make friends along the way, for it may get lonely when you reach your destination. And finally, be content. This does not mean you should not aspire for betterment, or become complacent. It simply means being happy with what you are and feeling grateful for what you have right now.

COMPLIANCE - Stay On The Right Side Of The Law

A vital component of organizational effectiveness is ensuring compliance with the laws that govern their functioning. This involves not only an awareness of all the regulations and legislations that apply to one's organization and following them stringently, but also the ability to demonstrate compliance by keeping records of checks, implementing policies and procedures that abide by the relevant laws, and evidence that members of the organization are taking responsibility for compliance.

No organization wants to face criminal charges for not adhering to the law. However, there are so many different regulations and laws governing how a non-profit should manage its taxes, raise funds, recruit staff and volunteers, donations received and spent, fiscal compliance, employee salaries, safety rules, and several more issues. Despite this regulatory thicket, and no matter the many constraints, non-profits must always strive to stay on the right side of the law, while doing effective work in their chosen area.

To get a sense of the awareness among non-profit organizations about the importance of legal and fiscal compliance and determine what measures they had taken to implement regulatory compliance, CAP spoke to women working with three different NGOs. This is what they shared with us.

Is your organisation aware of all its compliance requirements under various laws and what steps has it taken to fulfill these compliance needs?

Vaishali Goel is the Assistant Honorary Treasurer of Paramparik Karigar, which promotes traditional Indian arts, crafts and textiles. Its members are craftsmen from most states of India whose work, showcased at various exhibitions in Mumbai and other metros with the help of donations from corporate houses and individuals, has brought them great recognition and a sustainable income too. "Since our organization gives absolute importance to legal compliance, we have attended CAP's seminars to increase our awareness and we also consult Mr Dadrawala, who is prompt and helpful in reply to our queries", Vaishali told us. "CAP's quarterly news magazine Philanthropy is also very informative, keeping us updated on the latest rules and regulations we need to follow as an NGO. This has helped us to become and remain legally compliant," she added.

Gaynor Pais is CEO of International Resources for Fairer Trade (IRFT), a charitable trust with a global presence. Established in 1995, IRFT is a self-sustainable organization and comprises a team of 10 highly qualified professionals from various disciplines and levels of expertise. Gaynor too was happy to report that her organisation considers all areas of compliance as crucial to her organisation. "I would say we are very well versed with all compliances and applicable laws pertaining to our organization, since we are highly rated as

By Meher Gandevia-Billimoria

Social Compliance experts, Decent Work Global Master Trainers, Social Compliance Auditors and Continuous Improvement Monitors. This forms the profile of IFRT's key programme area – Ethical Business Solutions (EBS). So, our organization understands and respects compliance needs, both statutory and voluntary," she asserted.

Zainab Ishak Valikarimwala is the Honorary Treasurer of Royal Society of Bombay and Royal Higher Education Society, charitable and educational trusts respectively, that work for the advancement of underprivileged in Mumbai. The two trusts run the Royal College of Arts, Science & Commerce, Mira Road; Royal Girls High School (English Medium); Royal Girls High School (Urdu Medium); and the Royal College of Education & Research for Women. While she agreed that compliance was necessary, saying, "We need to be compliant in all aspects", she conceded that, "we have not made any specific



effort in this direction. We are not aware of all compliances but Philanthropy magazine helps us tremendously."

While non-profits have to comply with the same laws as for-profit enterprises, one major difference is a resource crunch, both of staff and capital, to address their compliance needs in the way that corporations are able to do. There is a perception that non-profits are scrutinized far more than profit-making entities and that in some respects, the former's compliance requirements are more arduous.

Is the compliance burden is greater for non-profits than for businesses, which may be better equipped to be legally compliant? Do you think NGOs are held to greater standard of accountability?

Zainab certainly thinks so. "Since our finances come from donors and well-wishers, we are more accountable compared to profit-based companies. Yes, NGO are held more accountable and due to lack of expertise in these matters they face more problems as compared to companies who have different departments and can recruit manpower to deal with compliance," she stated.

While Gaynor concurred with the necessity of compliance, she also flagged a few concerns. "Compliance is absolutely necessary for both non-profits and for-profit entities. However, both sometimes overlook this responsibility in the larger interests of business and sustainability. Profit-making enterprises have a formal structure and the staff ensure adherence to all compliances - Legal, HR, Finance, Board Governance etc. The organization's structure and hierarchy lends clarity to each role

and responsibility towards compliance. Yet, very often the intent is clearly towards statutory compliance, and legal policies are more to protect the larger interest of the business. Elaborating on a practical problem many NGOs face, she said, "In the case of non-profits, the responsibility to be sustainable over and above the ability to uphold the causes that the organization represents becomes critical. With every good intention to represent the cause, the not-for-profits are in a dilemma on compliance. The need to be compliant is genuine, but often challenging, and as the organization grows the need to survive and sustain outweighs the compliance imperative." "NGOs are held more accountable due to the free flow of national and international funds to them and their failure to manage the same responsibly may lead to a sceptical attitude about their ethical philosophy and raise doubts about whether the funds reach the intended beneficiaries. Thus, this needs to be recorded and reported regularly. Failure to be transparent and accountable leads to blacklisting and termination of funding sources which is detrimental to the survival of the organization," she concluded.

Vaishali had no view on this. "Since we are not attached to any for-profit companies we cannot comment on this." She did add, however, "On our part, as an NGO we try our best to stay compliant and we have had no difficulty in doing so. Since



NGOs have to deal with government rules and regulations on the one hand and the safe keeping of accounts held on the other, it is imperative that we are compliant."

More and more non-profits are seeing increased value in investing in strong compliance initiatives because these measures not only prevent violation, but may also serve to mitigate fines if an offence has been committed. A compliance review assists in identifying areas of importance and avoiding pitfalls, without imposing additional burdens.

Of course, embedding these compliance policies into a non-profit's culture requires further, practical measures. Having compliance policies but not enforcing them may be almost as harmful as not having them at all. The most effective way of ensuring compliance is to train employees in the basics and stressing how they apply to the organization's well-being. Regular health checks and clear procedures for reporting concerns are also critical to promoting effective compliance.



Compliance can no longer be viewed in isolation from the rest of the organization or as a function to keep it out of trouble; it must become part of the overall business strategy of any operations or organization, big or small. Compliance and related practices should be a non-negotiable practice implemented throughout the organization AND PERFORMED BY ALL. Ultimately, this integrated approach will lead to better and less burdensome compliance.

What internal controls does your organisation have to ensure compliance? Which areas do you give importance to - Legal, Finance, HR, Board Governance, Strategy, Communication, Fundraising, or Volunteer Management?

Gaynor shared these details with us. "Our compliance team (EBS) continuously monitors and mentors the Administration and Finance departments to adhere to ethical social and legal compliances stipulated under the Bombay Trust Act, 1950. Also, we ensure a voluntary transparency mindset and seek opportunities to submit documents to reputed Government Bodies (CII, MHA, CBI) and Private Validation Agencies to build a good credibility profile for IFRT. Other measures we have undertaken are requests for validation statements/letters of recommendation from our Project Partners, Project Funders and Global Training Organizations that we represent and the constant updating of our website to provide and promote IRFT as a credible, responsible and transparent organization of repute.

Our Board of Trustees is also well-informed about all developments and compliances, with the intent to seek their guidance regularly and voluntarily, over and above the statutory quarterly board meetings and reviews. Good governance, upholding the 'Vision and Mission' and verbally reinforcing the values of the organization to new recruits are part of our ongoing HR Team Building exercises."

At the other end of the spectrum, Zainab admitted, "So far, a monthly check is done on the Income/Expenses of the trust but other means of compliance we have yet to formulate." The areas of compliance her organization considered important were Finance, Strategy, Communication and Fundraising, she said. In an illustration of having made a sound beginning, Vaishali claimed, "Our administrative system is set up to be absolutely transparent and democratic to ensure compliance. And the three areas we give maximum importance to are Legal, Finance and Fundraising."

Compliance – Compulsory or Capacitative?

Ever since legal, financial and structural compliance became mandatory for India's voluntary sector under the latest regulatory guidelines, there has been plenty of animated debated, both within the sector and elsewhere about the need and nature of compliance. The plethora of laws and regulations applicable, the number of government departments involved, a general lack of awareness on the subject, doubts expressed that the focus on compliance diverts critical resources from the core programs of the organisation – the questions continue to be asked and answered. Even so, there is an emerging consensus within the sector that compliance is indeed critical, not just to stay within the bounds of the law and remain in the good books of one's donors, but in order to optimise organisational effectiveness, become and remain sustainable, and achieve a high degree of credibility.



Nawshir Mirza
Board Member
CAP

They say that to live in a civilized society, it is necessary to have laws. If the quantum of laws is any measure of the extent of civilization, India would rank among the most civilized nations ever. Mindful of this, the government is making an effort to make it easy to do business in India. While there may be doubts about the eventual outcome of this effort, nobody in government has shown any concern for making it easier to carry out social activities or to be philanthropic. Indeed, the treatment of those NGOs that appear to threaten the government's (mostly) misguided plans face the full weight of laws designed to twist their arms into submission. Can NGOs derive any benefit from complying with the law? There is, of course, the obvious one of not facing penal action for violations. But the information required to be maintained and reported by some laws might be useful for NGOs in running their affairs. Financial statements are a good place to begin. They provide a wealth of information about the cost of various activities, the sources of funds, the financial position, monies blocked or not being realized and disputed amounts receivable, as also payable, among others. Analysing them further will provide even deeper insights. The annual TDS return will give trustees and managers an indication of the amounts paid to specific contractors, employees, suppliers and others. Other records and returns could be mined for useful information too. Seek and you will find a wealth of information in records and returns maintained for compliance with the laws. As for substantial compliance, as I said earlier, it is the cost of living in a civilised society.

Involved in the movement for improved governance in the corporate sector since 2003, Nawshir, a Chartered Accountant by profession, is also actively involved with the Indian Red Cross.



Urvashi Devidayal
Head of Programs (South Asia)
Thomson Reuters Foundation

Often, the term compliance is viewed with a sense of fear or disregarded as a task too big to take on. Especially in a country such as India where laws are numerous and complicated, often archaic and difficult to comprehend. Many organizations choose to not regard basic compliance as a necessity for running a social organization. However, this need not be the case. Trust Law helps over 200 organizations in India to access law firms across the world that can support them for free. Knowing the laws that are important to your work can help with being a better governed and stronger organization. It can enhance organizational effectiveness (for example, with strong HR policies you can attract and maintain the right talent). As you scale up your work, how you work becomes even more important. Organizations have also drafted child protection policies, sexual harassment policies and privacy agreements that have given donors confidence in their work. Using your Board effectively to understand what levels of compliance are important can be a really useful way of staying ahead of the game. In the long run, while it may require some work, the benefits of compliance far outweigh the risks of not paying attention to it.

TrustLaw is the global pro bono legal program of the Thomson Reuters Foundation. It connects the best legal teams and corporate law firms with high-impact NGOs and social enterprises in over 170 countries, giving them access to credible and free legal advice.

According to the Merriam-Webster dictionary, compliance is the act or process of conformity in fulfilling official requirements. Accountability calls for NGOs to comply with requirements stipulated by local and national governments. This has immense implications in our times, given the often unfavourable response the not-for-profit sector receives. Compliance is commonly viewed as cumbersome due to the various requirements stipulated by the authorities. However, while occasionally tedious to follow, these measures are not impossible to adopt with a disciplined approach. NGOs need to address compliance the way they do other focal areas of their mandate and not view it as a separate formality that must be fulfilled to appease the authorities. At Mission for Vision, compliance is viewed as a step towards good governance, ensuring maximum impact and accountability for our key stakeholders – whether they are the communities we work with, donors, partners or government bodies. It is important to maintain a balanced perspective while viewing an NGO's work. An organization that follows all statutory procedures is not necessarily one that delivers the best to its communities. Interestingly, some of the best work I have seen over the past two decades has been delivered by lesser-known organizations that have been more focused on their vision and mission being translated than on statutory requirements. Gaps in their compliance were largely due to inadequate information. These organizations, that work in remote areas of the country, with innumerable challenges posed by geography, climate and poor connectivity, would benefit greatly from the support of larger organizations. Compliance in India could seem a bit complex, but government expectations are not unrealistic given the variations in geography, languages and cultures. In this complex environment, it is important for the government and other statutory bodies to have various procedures in place to demonstrate compliance and good practice. While it is important for NGOs to comply with stipulated requirements, it is equally imperative that the government establishes robust reciprocal mechanisms to assess compliance. This is an area that needs much attention; poor practices will continue if the system fails to respond adequately. One way towards a more transparent and accountable environment is for NGOs to demonstrate their compliance online. It is also very important to foster and strengthen partnerships and networks for learning, sharing and building capacity, akin to what Centre for Advancement of Philanthropy and other organizations encourage.

Mission for Vision works to restore sight to the visually-challenged, especially among underprivileged persons, as it believes that preventable blindness is both a consequence and a cause of economic deprivation.



Elizabeth Kurian
Chief Executive Officer
Mission for Vision



Christina Furtado
Operations Director
Equal Community Foundation

In theory, compliance mechanisms provide the necessary checks and balances that ensure organizations can be held accountable. For example, registration requirements exist to bring organizations within the purview of the legal framework; similarly, filing of tax returns and audited accounts are meant to keep a check on utilization of funds. These mechanisms also provide the necessary frameworks for organizations to develop systems and processes that can improve the efficiency and effectiveness of their programs. In practice, however, compliance mechanisms are not very well articulated, understood and practiced. Two factors complicate compliance in NGOs: first, compliance spans different areas and different reporting authorities – legal, finance, human resources and governance practices; and these are not comprehensively documented in a single location. NGOs may also be short on staff and hence the responsibility for compliance is not always shouldered by people with professional expertise in each of these areas. The lack of expertise coupled with the lack of reliable sources of information on compliance policies lends a measure of complexity to these activities. Second, compliance tends to fall within the realm of administrative activities and on account of the traditional preference of funders to fund only program-related expenses, organizations lack resources to develop capacity in this area. Resolving these two issues by developing comprehensive sources of information on compliance policies and by increasing the amount of funding available to build capacity in these areas will not only enable organizations to build robust systems and processes to improve efficiency and effectiveness of program delivery, but also enhance standards of accountability in the sector.

Equal Community Foundation is a Pune-based non-profit organisation that works with men to end violence and discrimination against women. Its mission is to ensure that every man in India has the opportunity to study and practise gender equitable behavior.



Tanya Balsara

I met Tanya Balsara five years ago, while co-authoring my book, Cuisine for A Cause. If I hadn't been told that she had a condition called retinitis pigmentosa, I would never have guessed that she was almost completely sightless. Warm, cheerful and living life to the fullest, her work embodies the phrase 'our eyes are our window to the world'. Through her computer centre she offers the visually-impaired an opportunity to experience a whole new world. It's both my pleasure and privilege to share her journey with you, in her own words.

I founded Tanya Computer Centre because...having become computer literate myself from the Indian Association for the Visually Handicapped, Churchgate, I realised that computers and the internet can open up a whole new world and I can make chutney of my handicap! A desire grew in me that I should afford this opportunity to others like me and thereby open up a new world for all of them too. I also had time on my hands, so I thought I would do the teaching myself.

When my dad came to know about this desire of mine, he helped me set up Tanya Computer Centre at MNB Home (full form) in Jogeshwari, Mumbai. Subsequently when MNB home stopped functioning, we decided to move the centre to an outhouse in our compound at home, where it functions today. I soon realised that for the visually-challenged, a knowledge of computers is also a boon because it can open up many new job opportunities for them and make people like me economically independent, which is so important in today's world.

At the end of a typical day at the centre ... I feel sometimes tired, but at most times great. It gives me immense satisfaction, especially after a test where students have performed well and great joy to share my knowledge with others.

How I Got Here

By Meher Gandevia-Billimoria

Challenges I faced along the way were... initially, only the language barrier, as some of them don't follow spoken English fully. At times, certain concepts are also difficult to visualise. To overcome that hurdle, a tactile book has been prepared. This book consists of tactile images of what is on the screen like the desktop, icons, windows, etc.

Our work has come a long way... thanks to my wonderful family and well-wishers who have helped by motivating me, encouraging me and giving me kudos at each stage for all my little achievements. It is only thanks to my family's support and encouragement, that I am where I am. When I say support, it's not just financial, but also emotional. I need a little push to get going with things and my Dad has played a huge role in this. However, we do have a long way to go.

If I had not set up the centre, I would... probably have gone to my Dad's office everyday and spent some time there. However, I must say I am very happy doing what I do and can't imagine life without it. The centre has increased my confidence, and it has also provided a platform to interact with all kinds of people.

My motivation comes from... hearing stories of successful people that the world is full of, including many disabled people who have not let their disability come in their way. Just the other day, I heard about a visually-challenged girl becoming an IFS (Indian Foreign Service) officer. I truly believe that 'disabilities create barriers but determination breaks them'. I also believe that family support is the most important. The disabled don't need sympathy, but empathy.

For any organisation, I think being legally compliant is... absolutely important, in today's world of complex laws. At the centre we use only legal software. I think it is important to be open to change and to keep up with technology in order to progress, but one must also stick to certain core values like honesty, integrity and live in compliance with the laws of the land and ethics of society.

The USP of my centre is...our special bond with our students, whom we try and provide with a mix of work and fun. After all, all work and no play makes Jack a dull boy! We also try to aim for overall personality development and English literacy, which is as important as computer literacy. The visually impaired may not have sight but don't lack vision. The differently-abled don't do different things; they just do things differently.

Awards and rewards... have been given to me a few times in the past, but they are only a milestone, or rather a stepping stone. The journey is far from over. I am fortunate that society has been kind to me and all my friends, family and acquaintances have been very supportive of me and sensitive to my special needs.

My 5-year vision includes... to diversify into areas like English speaking and soft skills development. It is to see the entire visually-impaired community computer literate and for employers to see them no differently than able persons.

Tanya Computer Centre, located in Jogeshwari, a suburb in western Mumbai, trains visually-challenged students to use the computer and internet, using a screen-reading software called JAWS.

If I could change one thing about the social sector... I would urge every individual to be sensitive to the disabled. We don't need sympathy, but empathy and support. The disabled need to be given the same opportunities as their able counter-parts. You will be surprised at their capability and dedication, if they are given an opportunity, training and some patience.

Leadership in any organisation... I think being a leader is necessary, not being a boss. "Let's do it", rather than "Do it!", should be every boss' motto. Respect cannot be demanded but has to be earned and that can only be achieved if you give respect to others, regardless of class and stature.

The one person who has inspired me... I am truly inspired by Helen Keller. She once said, "The most beautiful things in the world cannot be seen or heard, but felt with the heart".

In my free time I... I enjoy exercising at the gym, talking on the phone, listening to music and using the internet.

Getting to know you contd. from page 13

NC: What are the five values that guide your life?

ND: Integrity...success without integrity seldom takes anyone far.
Respect...for your own self, your work and all those that you engage with.
Commitment...in my time they called it loyalty and fidelity.
Faith...in my own abilities and a 'divine force' that guides and spins this entire universe.
Persistence...never give up on what you hold dear in life, be it an individual or an institution.



NC: What is the most interesting book you have ever read and why?

ND: There are many! But, perhaps, Russi Lala's 'Encounters with the Eminent' stands out because in this book, the author talks to great leaders and the lessons that emerge are amazing. What made Mother Teresa a leader was her ability to be non-judgmental; what makes the Dalai Lama a leader is his compassionate nature; what made Field Marshal Sam Manekshaw a leader was his ability to speak his mind to everybody, from his soldiers to the country's prime minister.

NC: Who do you consider to be your mentor? How has he/she helped you?

ND: Once again, there are many and I would enumerate, not necessarily in priority order. My dad, who instilled in me strong values of honesty and sensitivity to the needs of others. Russi Lala & Darius Forbes, for introducing me to the world of philanthropy and keeping me motivated through their support. Everything that I know about tax laws is thanks to R R Chari. y friend and colleague Meher who, five years ago, shook me out of my comfort zone at CAP and is reinventing CAP to meet the changing needs of the sector. Last but not least, my son Darius, for teaching me look beyond dogmas and outdated beliefs.

Derivatives in the Social Sector

By Abhishek Thakore



Abhishek Thakore is co-founder of the Blue Ribbon Movement, that works with the youth to create leadership that facilitates social transformation. An MBA from IIM, Bangalore, in his previous avatar as a finance professional he has worked with Deutsche Bank, Boston Consulting Group and the Hay group. He combines his extensive knowledge of two diverse worlds to compile a ready reckoner of 'social sector derivatives', highlighting their purported uses and inevitable negative impact. Derivatives were famously dubbed 'weapons of mass destruction' by the legendary investor Warren Buffet. My own internship at an investment bank exposed me to highly complex financial instruments that were very useful but had the potential for harm.

One of the areas I was working on was credit derivatives; very profitable instruments that protected companies from default. About six years later, one of their variants led to a bubble on Wall Street.

I am no longer a finance professional, but in the social sector too there are some equally potent 'instruments' that have derivative-like tendencies. And while we share these, we are all equally prone to their misuse.



The intent is to be mindful about how these might misrepresent our impact, and while this is not directly covered under legal compliance it surely is honoring the spirit of things.

So, here are some social sector derivatives.

Financial Sector	Social Sector Equivalent	Impact
Setting up 'shell' companies in tax havens – creating multiple entities for the same activity.	Registering NGOs – many of them merely as legal entities – to legitimize certain activities or money.	The staggering number of NGOs registered in India (13 million!), with a very small percentage doing substantial work.
Limited liability: The shareholder's loss is limited to the contribution. Call / Put options : Option to buy or sell in the future depending on price.	Almost no highlighting of 'unsuccessful' projects and learning from there – instead capturing the 'upside' of success and highlighting only that aspect.	Creates a perception that no NGO is doing anything wrong – there are only successful, high impact projects. Also, limits how much we learn.
Futures Contracts: An agreement in the future, that lets you buy with just paying the margin (the possible fluctuation in costs).Collateralized Debt Obligations: Combining debt from various sources and then creating 'tranches' based on their quality.	Claiming credit for the same action at multiple levels i.e local, national and international, by different partners. Similarly, actions by one individual are attributed to the incubator, fellowship, associates, some programs they may have attended – EVERYONE!	Creates a perception that a lot of change is happening because the 'credit taken' is exponentially more than the work done. This is offset, perhaps, by many NGOs who don't communicate their work at all!
Collateralized Debt Obligations: Combining debt from various sources and then creating 'tranches' based on their quality.	Combining all projects / activities from a program and then using the highlights to imply that this represents the 'average', rather than the top.	Light – touch models that claim impact for deep changes. Intensive programs that add up dropouts and partial completions.

contd. on page 21

ASK THE EXPERT

Q. We have received a donation from an NRI who has US citizenship and a US passport. He earns income in India through property (rental income). His donation has been made from this income in Indian rupees. Should this donation be considered as an FC (foreign contribution) or a local donation?

A. The test under law is neither currency nor country. The test is citizenship. Since this person is a US citizen he is a 'foreign source' as per FCRA 2010. Hence, even if he donates sums of money in India from his NRE or NRO account in Indian rupees it would be a foreign contribution.

Q. Can you please clarify if support to organisations for low-cost housing in India is permissible under CSR? Could this be covered under slum re-development in Schedule VII? The question is specifically about urban housing (with or without a micro-finance element by the NGO) and not rural housing, which would get covered under rural development/ poverty eradication or housing being rebuilt post a disaster.

A. Supporting low-cost housing in a slum area could fall under CSR, especially considering that the Ministry of Corporate Affairs has asked companies to interpret Schedule VII "liberally". However, please note that 'slum area' shall mean: "Any area declared as such by the central government or any state government, or any other competent authority under any law for the time being in force."

Q. Since we are an NGO and just providing part time tuitions to the children of women in red light areas, will we come under educational institution regulations?

These regulations apply to 'educational institutions' a term which has not been defined under the Employees' State Insurance Act (ESIA). Is part time tuitions the main activity or is it just an incidental activity among many others? If it is the latter, you need not see yourself as an educational institution.

Q. At the beginning of the year, we had reintegrated one of our vocational programs under the main foundation. Since the vocational program will now be a dormant organization, does the board need to meet in person for the four meetings? Also, as there will no business to discuss in these meetings, what should be put in the minutes of the meeting?

A. Unfortunately, if you were to wind up or dissolve the vocational training trust, the Charity Commissioner would direct you to go to a civil court to get an order, which would be a long and expensive procedure. Therefore, it is best to just keep it alive but defunct. Since it will be a defunct entity the board can just meet once a year (perhaps back to back with the foundation's meeting) simply to sign the Nil returns, etc.

Q. We are an NGO registered under the Societies & Trusts Act, working towards the right to a better life for women and children in red light areas. Are we still supposed to register with the EPF?

A. Sorry, but EPF is a social security statute and NGOs are not specifically exempt from the requirement to pay PF to their employees if they number more than 20.

All queries answered by Noshir Dadrawala, who 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 - connect@capindia.in

Readers Contribution contd. from page 20

As social catalysts, it pays to be responsible for what we communicate and to resist the temptation to overstate our results and impact. Otherwise, we risk doing what the financial services industry did to itself. Instead, let us be more mindful of our communication and the spirit of our impact.

Views expressed are those of the author. CAP does not necessarily subscribe to the views, either in whole or in part. Readers are welcome to send us their thoughts and counterpoints - connect@capindia.in

Compliance with the Law on Sexual Harassment at Workplace

Sexual harassment of women at the workplace is an issue that has been of serious concern and talked about in the past few months in the professional world. With a significant number of women entering the work place in the organized sector, sexual harassment cases are increasingly coming to light now. Organizations need to foster a work culture that respects the dignity of every individual employee - female or male, that comes to work, and hence there is an urgent need to ensure not only redress but prevention of any kind of sexual harassment at the workplace.

CAP: Do you think numbers are correctly reported?

“Numbers by whom, of who? In the past one and half year, many women especially young girls are increasingly coming forth to complain. The fact though is that these cases are not reported by the concerned organizations in their annual report or elsewhere, there is under-reporting.”

CAP: Are men ever harassed?

Harish: “Yes, they are. The power dynamics in a workplace are different from those say in a domestic sphere (at homes – where usually men have more patriarchal privileges and women are in a secondary position, in workplace situation there are instances (many) where the women may be in a senior position to their male colleagues and can harass men, also misuse the law on sexual harassment. Therefore, many corporate have formulated their policies on anti-sexual harassment as gender-neutral policies... though their emphasis may be on sexual harassment of women employees and they argue that they are complying with the existing legislation, they want their policies to be broader and inclusive of men”



Sixteen years after the Supreme Court of India gave directions to all employers on addressing sexual harassment by way of Guidelines (known popularly as the Vishakha Guidelines), the Government of India enacted a special law on sexual

By Meher Gandevia-Billimoria

harassment at workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, which came into force on December 9, 2013, has clearly defined sexual harassment and laid down specific steps organizations should take when dealing with sexual harassment. The Act is applicable to all establishments in the formal and the informal sector including schools, colleges, universities and NGOs.

As per the Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013, all business organizations employing 10 or more than 10 employees, are mandatorily required to:

1. Formulate the Company's Policy on Prohibition, Prevention and Redressal of Harassment at the workplace. Once formulated, this should be disseminated to all employees at all locations.
2. Constitute an Internal Complaints Committee (ICC) as per the new law. The ICC must have an external member (he or she may be a social worker from an NGO committed to the cause of women, or familiar with Issues relating to sexual harassment).

The ICC must prepare an annual report (for the financial year end, which currently would be March 2016) which shall have the following summarized details:

- number of complaints of sexual harassment received in the year.
- number of complaints disposed off during the year.
- number of cases pending for more than 90 days.
- number of workshops or awareness programs conducted against sexual harassment.
- nature of action taken by the employer.

This information has to be included by the employer in the annual report of the organization as per Section 22 of the Act.

3. Display notices in conspicuous places (like the canteen area) frequented by many staff at all its locations regarding the constitution of Internal Complaints Committee. Names and contact details of all members of the ICC, penal consequences of sexual harassment violations must be included in the notices.
4. Organize workshops and awareness programs at regular intervals to sensitize all employees, at all locations, about the provisions of the law and to promoting gender sensitivity.
5. Organize Orientation Programs, Seminars, Capacity and Skill-Building Programs for all members of the ICC.

CAP: Do you think this law has been reasonably well implemented?

Harish: “No. The implementation is not seen in many places across the country. When the law had just come into force in December 2013, there was heightened curiosity among private

business organizations along with anxiety on the implementation as the topic of sexual harassment was not what they were comfortable dealing with. In the past few months, there has again been a lull and many organizations have not taken the Act seriously. One of the major reasons being the lack of monitoring mechanism from the Government (the Ministry of Women and Child Development) still not in place. As a result, the enforcement of the law still remains poor. Prior to the law, there were Guidelines by the Supreme Court, which many concerned organizations never took seriously. Even with the new law, the constitution of the Internal Complaints Committee in many places is not done as per the manner specified under the law, the gender sensitivity workshops are not held periodically, a significant number of employees are not even aware about the law, though it is more than two years old!

The law is applicable to not only business organizations but to even NGOs and educational institutions, which include not just colleges but also schools. Sadly speaking, I have not come across any Principal of a school adhering to the basic compliance of forming an Internal Complaints Committee. It has been reported nationally that one of the reasons for girls dropping out from schools has been their sexual abuse and if the law is implemented by sensitive and committed Principals of schools, this problem would be dealt with effectively.”

While there has been some deliberation on the subject of sexual harassment and the new legislation among business organizations across the country in the past one year, there needs a concerted effort by all organizations to ensure the effective implementation of the law. Due compliance with the law on the subject would be a key step in creating and sustaining a healthy work environment.

CAP: Do you see any changes in trends from earlier times?

Harish: There are fewer organizations (largely multinational) that are following the law in spirit. The only positive trend that is visible is that a significant number of young women professionals are coming forward to complain and assert their rights. In the last one year, we have seen examples of girls (two) who were law interns who have mustered courage to lodge complaint against senior Supreme Court judges, women complaining against journalists, the CEO of a notable organization working internationally on Climate Change has been charged by a young executive (which emboldened another woman employee of the same organization to come ahead and complain against the CEO subsequently. I see that women, who are aware about the legislation are effectively using the redressal mechanism under the law to get due justice, despite the law not been followed by organizations the way it should have been.

CAP: Any two things an organisation can do to ensure a better culture?

Harish: “The law, apart from highlighting the redressal mechanism aspect, also emphasizes the prevention part. Even if the organization arranges at least one gender sensitization

workshop (with a focus on the new law) covering all employees at all locations and then follow it up with intermittent programs that would elicit their participation in promoting an enabling dignified work environment, it would be a significant step. By encouraging, the employees to have engaging conversations on the subject would signal the organization's accountability and sincerity towards compliance of the law in spirit.”

The second thing, which the organization can do, is to ensure that the Internal Complaints Committee, if constituted, is active and visible to all employees. That will go a long way in reassuring all women employees that the organization has a zero tolerance approach on the issue of sexual harassment and it will take all steps to ensure speedier redressal in case of any incident of sexual harassment that may happen in future.”

CAP: What has been MAVA's role with regard to the law? How effective has it been? Any challenges and how do you overcome them?

Harish: MAVA has been conducting series of workshops and trainings on the subject for business organizations, Universities and Colleges and NGOs across the country. We are also represented as External Member on a few companies and colleges. The implementation of law is slow and needs to be accelerated. Through continuous process of engagement with the key stakeholders – the organization, its top management, employees and representatives of civil society, we will be able to make a difference.”



Harish Sadani has been a CAP member and consultant and gender trainer for over two decades, apart from being Chief Functionary of Men Against Violence and Abuse, or MAVA. He has been providing his professional expertise to several business organizations, universities and NGOs across the country on addressing all aspects related to sexual harassment at the workplace. Harish Sadani can be contacted via email at saharsh267@gmail.com CAP plans to have a workshop in mid 2016 on this topic and interested NGOs can contact Meher with their suggestions.

The Year Gone By And The Year Ahead At



In order to embark on the new, we must release the old. A trapeze artist cannot swing from one bar to another without letting go. At any year's end, one tends to bring up thoughts and emotions laden with deeper meanings, which can be hard to ignore. Most organisations take stock of moments reflecting upon their accomplishments or anguishing over what never got done. At CAP, we did the same. We asked ourselves...

What did we accomplish?

With help from Deval and his team from Dasra in April 2015, we finally put an end to an internal debate of whether CAP is a one-stop shop to address all problems and concerns that bother NPOs or caters to only issues around charity laws, tax exemptions & deductions! We figured, we framed it and we finally finalised that CAP caters to COMPLIANCE!

What were the significant enhancements to all our programme areas of the year past?

Legal Advisory - In addition to our expertise in Trust Law, Income tax, FCRA, with the help of our Advisory Panel we assisted NGOs with understanding Labour Laws, Service Tax, VAT and property related compliances. We completed successfully due diligence audit compliance reviews for a few local and an international NGOs.

Capacity Building - For the past 29 years, CAP has conducted workshops on various topics with numerous speakers. Going forward our Capacity Building and Consultancy will continue to focus on the core areas of NGO Compliance – legal, fiscal, good board governance, human resources, volunteer management, communication/reporting and last but not least fund-raising.

Corporate Support - We continue to engage intensely with companies guiding them through customised workshops for their team or at other times simply validate if they are on track and ensuring that they are CSR compliant as per law.

Research and Publications - None of the above areas of work would have been possible without the help of all our consultants and interns who helped us figure out what additional areas to help in, how we help and the meticulous documentation that enabled us to expand our intellectual capital in terms of legal content. CAP's publications on Good Governance, Fundraising, Cuisine for a Cause are SOLD OUT!. By popular demand, we retain our print news magazine but with changing times, we have evolved to Research and Resources - with an active blog that carries all updates as they happen and a Facebook group that helps NGOs discover information and discuss issues.

What did we do right? What do we feel especially good about? What was our greatest contribution?

That would be for our CAP members & affiliates to comment, commend or criticise. But we would like to believe that we continued to do what we have always done..... provide simple solutions to complex conflicts and concerns

What were our biggest challenges?

The clichéd as it sounds answer that every non-profit would have – mobilising resources and sustainability.

For what are we particularly grateful?

We are grateful to the Tata Trusts whose support helped us to take this leap of rediscovering and re-structuring our work. We are thankful to all the member and affiliate organisations registered with CAP, individuals, supporters, well-wishers of CAP who had faith and availed of our services and recommended us to others.

We appreciate the value that each board and team member, our consultants and interns have contributed over the year, even the ones who we have said our goodbyes to.

My personal thanks to Noshir who has made possible and accepted the change after all these years & to our board chair person Rati Forbes who has not only been encouraging but supported us rock-solid.

What lies ahead?

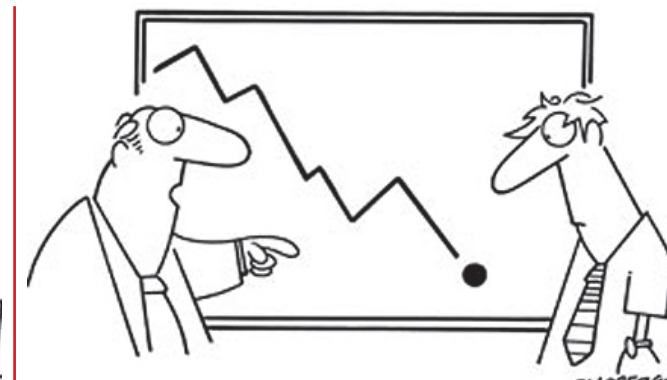
As CAP enters its 30th year,
The challenge is to carry forward the vision & mission without compromising the values or original ethos of our founders.
Helping NGOs be COMPLIANCE COMPLETE with our NEW compliance review offering.
Ensure COMPANIES are CSR COMPLIANT and engage to align CSR with their business interests.
Continue to remain, as Noshir has always said... A friend to the sector.



Meher Gandevia -Billimoria
Operations - CAP



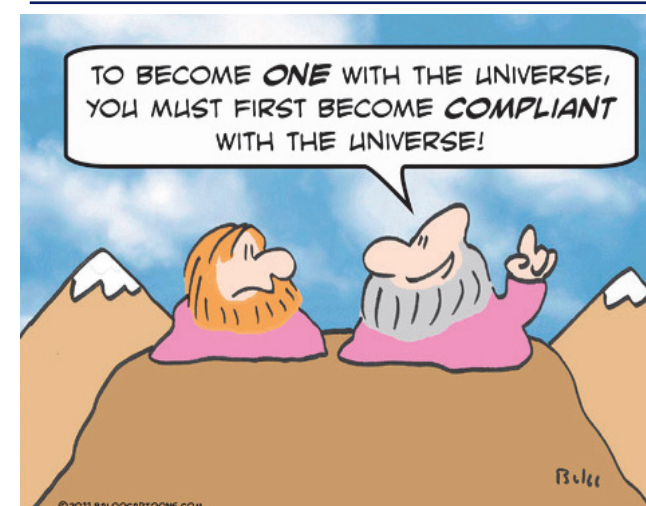
"Let's form a committee to create a task force to develop a team to determine the fastest way to deal with the problem."



"I put a little ball at the end, so it looks like it will bounce back."



"Yes, this is an emergency - I'm being held at PowerPoint."



"Don't you think this internal audit's gone too far?"

